

MEETING  
STATE OF CALIFORNIA  
THE RECLAMATION BOARD  
OPEN SESSION

RESOURCES BUILDING  
1416 NINTH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

FRIDAY, JUNE 8, 2007  
12:30 P.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Ms. Rose Marie Burroughs, Member

Ms. Teri Rie, Member

STAFF

Mr. Jay Punia, General Manager

Mr. Stephen Bradley, Chief Engineer

Ms. Nancy Finch, Legal Counsel

Mr. Dan Fua, Supervising Engineer

Ms. Lorraine Pendlebury, Staff Assistant

DEPARTMENT OF WATER RESOURCES

Mr. Mark Herold, Chief, Floodway Protection Section

ALSO PRESENT

Mr. Paul Brunner, Three Rivers Levee Improvement Authority

Mr. Tom Eres, Hofman Ranch

Mr. Thomas Foley, Concerned Citizens for Responsible Growth

Mr. Randy Margo, County of Yuba

Mr. Robert Naylor, representing Mr. and Mrs. Thomas Rice

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Ric Reinhardt, Three Rivers Levee Improvement  
Authority

Mr. Thomas Rice, Rice River Ranch

Mr. Jim Sandner, United States Army Corps of Engineers

Mr. Scott Shapiro, Three Rivers Levee Improvement  
Authority

Dr. Dale Smith, Alfa Omega Associates

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good afternoon, ladies and  
3 gentlemen. Thank you very much for your patience.  
4 Welcome to the State Reclamation Board meeting.

5 If General Manager Punia would please call the  
6 roll.

7 GENERAL MANAGER PUNIA: Jay Punia, General  
8 Manager of the Reclamation Board.

9 For the record, Board Member -- except for Board  
10 Member Teri Rie, the rest of the Board members are here.  
11 And I saw Teri. She's on her way and she will be here  
12 pretty soon.

13 PRESIDENT CARTER: Very good. Thank you.

14 At this time we'll consider approval of the  
15 agenda for today.

16 Are there any suggested changes or amendments to  
17 the agenda for today?

18 Just as a note, we neglected to put a time on  
19 Item 4 of the closed session. We are going to try and  
20 hold that closed session as close to 2:30 as we can.  
21 Hopefully we'll be done with our Item 3 by that time. But  
22 we're going to try and stick to that schedule.

23 SECRETARY DOHERTY: At 3:30?

24 PRESIDENT CARTER: At 2:30. So approximately two  
25 hours from now.

1           So I will entertain a motion to approve.

2           SECRETARY DOHERTY: I'll make a motion that we  
3 approve the agenda as presented.

4           PRESIDENT CARTER: Is there a second?

5           VICE-PRESIDENT HODGKINS: Second.

6           PRESIDENT CARTER: We have a second.

7           Any further discussion?

8           All those in favor indicate by saying aye.

9           (Ayes.)

10          VICE-PRESIDENT HODGKINS: Aye.

11          Sorry about that.

12          PRESIDENT CARTER: Opposed?

13          Very good. The motion carries.

14          Thank you. All right. We will move on to Item  
15 3, Applications.

16          This is Three Rivers Levee Improvement Authority,  
17 Application No. 18170 in Yuba County.

18          Mr. Fua.

19          (Thereupon an overhead presentation was  
20 Presented as follows.)

21          SUPERVISING ENGINEER FUA: Thank you. And good  
22 afternoon, Mr. President and Board members. For the  
23 record, my name is Dan Fua, the Board's Supervising  
24 Engineer. I'm here to present the Three Rivers  
25 application 18170 for your consideration for approval.

1           Before I will proceed with my presentation I  
2 would like to alert the Board members of a new addendum to  
3 your packet that was inserted in your binder. And that  
4 includes the revised draft permit.

5                               --o0o--

6           SUPERVISING ENGINEER FUA: It includes the  
7 revised Corps letter. We found a typo there. So that's  
8 the only change. And also the Attachment C, the  
9 cooperation agreement.

10                              --o0o--

11           SUPERVISING ENGINEER FUA: At our last Board  
12 meeting last May you directed staff to work with the  
13 applicant to resolve the easement conditions as specified  
14 in Condition 14 of the first draft of this new permit.  
15 You also directed staff to revise the Corps letter that we  
16 sent last May first in response for staff's statement at  
17 the Board meeting that that draft letter -- that letter on  
18 May 1st was not adequate and that they need assurance from  
19 the Board that the Board will accept the modified project  
20 for operation and maintenance and also to provide  
21 assurances for indemnification from liability arising out  
22 of this project.

23           Also, in connection with the Corps's  
24 requirements, the state in turn is requesting the same  
25 assurances from the local agencies, Three Rivers, Yuba

1 County, and Reclamation District No. 784. Staff is  
2 recommending to accomplish this through a cooperation  
3 agreement.

4 I'd like to refresh the memory of everybody about  
5 this application. Again, the applicant is seeking an  
6 encroachment permit for modifications to the left bank of  
7 the Feather River and Yuba River levees.

8 --o0o--

9 SUPERVISING ENGINEER FUA: The proposed  
10 project -- this is a slide of the east Feather levee, the  
11 location of the project. This is the Feather River, this  
12 is the Yuba, and this is the Bear. This is the new  
13 setback levee for Bear -- the new setback levee. And this  
14 is the Yuba levee -- south levee.

15 Segment 1 is this area here. And the proposed  
16 modification consists of slurry cutoff wall, waterside  
17 blankets, and relief wells.

18 Segment 3, modifications and improvements include  
19 slurry cutoff wall; stability berm; waterside slope  
20 flattening to achieve 3-to-1 slope; and crown reshaping in  
21 two locations, one in the Yuba east levee and one in the  
22 Feather River east levee.

23 --o0o--

24 SUPERVISING ENGINEER FUA: So at your direction  
25 we met with the applicant to resolve the easement problems



1 that we had at the last meeting. We reviewed the existing  
2 land uses of the area, segment 1 and segment 3. And this  
3 slide is the location of segment 1.

4           So as you can see, the existing land use in this  
5 segment is agricultural. So staff determined that it  
6 would be feasible to acquire a 50-foot easement on the  
7 landward toe of the levee in this area. We do recommend  
8 that, you know, such easement should not preclude the  
9 existing and future agricultural practices provided it's  
10 not inconsistent with the easement of the levee.

11                               --o0o--

12           SUPERVISING ENGINEER FUA: This is segment 3.  
13 This is the Yuba levee. This is Highway 70 here. So  
14 segment 3 starts at the west end of the Union Pacific  
15 Railroad and about 2.8 miles downstream.

16           As you can see here, this is an aerial photo  
17 again. The area adjacent to the levee -- this is the  
18 levee here -- is mostly developed, consisting of  
19 residential areas over here and other structures,  
20 including the Linda Water District wastewater treatment  
21 plant over here.

22           There is also an existing CalTrans environmental  
23 mitigation area along the levee in this area here.

24           So because of that level of development, staff  
25 recommends to the Board that the standard ten-foot

1 easement will be required for this segment, segment number  
2 3.

3 Staff also determined that the original  
4 requirement to acquire easement in the floodway is not  
5 critical because the Board regulates the floodway anyway.  
6 So staff recommends that we eliminate that requirement.

7 --o0o--

8 SUPERVISING ENGINEER FUA: In summary, the  
9 easements that we have agreed with are the following:  
10 Floodway, none; segment 1, 50 feet; and segment 3, 10  
11 feet.

12 --o0o--

13 SUPERVISING ENGINEER FUA: Staff -- this is  
14 the -- this line outlines the reason why staff believes  
15 that a 50-foot easement is necessary or should be required  
16 from the landward toe of the levee where its feasible.

17 First, it's for flood-fighting purposes. The  
18 experienced-base minimum setback requirements for  
19 structures is 50 feet for -- you know, during flood fights  
20 for safety of the crew, for efficiently moving equipment  
21 like -- huge equipment, for having staging area where we  
22 not normally, you know, bring in, you know, a lot of stuff  
23 for flood-fighting purposes like rocks and sand. Trap  
24 traffic also.

25 This 50-foot easement or setback requirement is

1 even recommended by the Sacramento River Corridor Planning  
2 Forum in their floodway management plan. So this is not  
3 something that -- well, as I've said earlier, this is  
4 experienced-based requirement, the 50-foot setback from  
5 the toe of the levee.

6           Second, the area is projected to be highly  
7 urbanized. And therefore we should have a wider buffer  
8 between human habitation and the flood control system,  
9 based on our experience with difficulty on regulating  
10 encroachments from the people living near the levee. It  
11 is our experience that people living near a levee extends  
12 their backyard fences. They plant and install irrigation  
13 systems near our levees and build structures such as steps  
14 on the slopes of our levees.

15           The Feather River east levee also has a history  
16 of failure. And despite all the improvements that the  
17 Corps of Engineers did in the last several decades, we  
18 continue to experience seepage problems there. So  
19 therefore we need to have some space for future  
20 operations -- modification or repairs for the levee.

21           And also, you know, future levee repairs is  
22 really likely. Like why do you need a footprint of our  
23 existing levee? Because of the uncertainties in the  
24 subsurface and foundation materials for authorization,  
25 which we use to select and design modification and

1 outbreaks.

2           Also, we had some uncertainty in the performance  
3 and effectiveness of current control measures.

4           Also, the changing Corps criteria. And of course  
5 the state -- the new state plan of flood control and  
6 global warming.

7                               --o0o--

8           SUPERVISING ENGINEER FUA: The environmental  
9 findings. The proposed project does not involve raising  
10 levees above the 1957 profile or beyond any authorized  
11 levee raises. Nor is realigning or moving levees.

12           Based on the information that the applicant  
13 provided to us, the net additional flow in the Feather  
14 River is about two cfs -- two cubic feet per second.  
15 Considering that the channel capacity in this location is  
16 300,000 cubic feet per second, we believe that that impact  
17 is very -- maybe not measurable and therefore not a  
18 significant impact.

19           Three Rivers had certified a final EIR for all  
20 the proposed improvement works in the east levee of the  
21 Feather River within Reclamation District 784, including  
22 the proposed project in this application.

23           Environmental impacts of this project within the  
24 jurisdiction of the Board includes construction related to  
25 erosion problems, and construction-related runoff and

1 spills. And the applicant has proposed to mitigate these  
2 impacts -- potential impacts by using best management  
3 practices during construction, complying with a storm  
4 water protection program plan and also complying with the  
5 waste discharge requirements that will be issued by the  
6 Regional Water Quality Control Board.

7

8 --o0o--

9 SUPERVISING ENGINEER FUA: The draft Corps  
10 letter. The two things that we had in this drafting -- in  
11 that draft is to provide assurance to the Corps. So they  
12 requested that we accept the modified project when  
13 completed for operations and maintenance.

14 And the second one is to indemnify the U.S.  
15 Government for any liability arising out of this project.

16 --o0o--

17 SUPERVISING ENGINEER FUA: So for staff -- well,  
18 for the -- in connection with these requirements by the  
19 Corps, the state in turn is requesting the same assurances  
20 from the local agencies, the Three Rivers, RD 784, and  
21 Yuba County. And staff is recommending to accomplish this  
22 through a cooperation agreement. And this cooperation  
23 agreement includes that the district, RD 784, perform  
24 operations and maintenance for this project when  
25 completed; and also that Three Rivers, Yuba county, and

1 Reclamation District 784 indemnify the state from all  
2 liabilities arising out of this project.

3 --o0o--

4 SUPERVISING ENGINEER FUA: Staff recommendation.

5 Staff requests that the Board make findings that  
6 the environmental impacts of this project within the  
7 jurisdiction of the Board have been mitigated or avoided  
8 as a result of proposed changes, alterations, and  
9 mitigations incorporated into the project; that mitigation  
10 measures set forth in the Three Rivers certified EIR  
11 relating to flood control and public safety are hereby  
12 adopted; and that Three Rivers mitigation and monitoring  
13 plan be incorporated by reference; that based on the  
14 evidence presented to the Board, the project will not  
15 result in hydraulic impacts that will have a significant  
16 effect on the environment.

17 Staff also requests that the Board approve the  
18 draft revised letter to the U.S. Army Corps of Engineers  
19 to request a review of the proposed modification project.

20 Staff also requests the Board to approve the  
21 draft cooperation agreements among Three Rivers, Yuba  
22 County, Reclamation District 784, and the State  
23 Reclamation Board.

24 Also requests that the Board approve the 50-foot  
25 easement required for segment 1 to provide adequate room

1 for levee expansion, modification and upgrades, flood  
2 fights, operations and maintenance, and buffer from urban  
3 encroachment.

4 And, finally, I request the Board to approve  
5 Permit No. 18170 for the project and delegate the  
6 authority to the General Manager to finalize and issue the  
7 permit.

8 And I would like to point out that the permit has  
9 a couple of late changes that are in your packet -- the  
10 addendum to your packet that you have today. And those  
11 are Conditions 19 and 17.

12 And that concludes my presentation, and I'd be  
13 willing to answer any questions you may have.

14 PRESIDENT CARTER: Are there questions for Mr.  
15 Fua?

16 SECRETARY DOHERTY: I have some questions.

17 We've put people in space, man on the moon.  
18 We've got the greatest technology of all available to us.  
19 And yet we're talking about looking to levee failures in  
20 the future, and that's why we need this 50-foot setback.  
21 I mean we're testing the soils, we're doing everything we  
22 can do to make sure that things are right.

23 Now, why are we stating "future levee repairs"?  
24 Are we going to have to repair some more?

25 SUPERVISING ENGINEER FUA: Well, we just want to

1 be conservative, because, as I've said, the Corps had  
2 repaired these levees for the last several decades  
3 starting in 1936, and they're employing the same  
4 technology or measures that we have that the applicant is  
5 proposing: Cutoff wall, seepage berms, waterside  
6 blankets. And they continue to fail.

7 And also, you know, subsurface investigation is  
8 not an exact science because you really can't see  
9 underneath -- the whole thing underneath. You could miss  
10 something there. So there are uncertainties in this  
11 technology.

12 PRESIDENT CARTER: Are there other questions for  
13 Mr. Fua?

14 I have one. On the staff report, page 4, item 3,  
15 it talks about the flood fight activities, the minimally  
16 acceptable distance for work crew safety and efficient use  
17 of equipment is the 50 feet.

18 Who's standard is that. Is that --

19 SUPERVISING ENGINEER FUA: It's --

20 PRESIDENT CARTER: Sacramento River Corridor  
21 Planning Forum or --

22 SUPERVISING ENGINEER FUA: It's nobody's  
23 standard. It's recommended by the Sacramento River  
24 Flood -- Corridor Flood -- Corridor Planning Flood  
25 Management Plan. And in that draft, they recommended that



1 a 50-foot setback from the toe of the levee is the minimum  
2 adequate setback for flood fighting. And, you know, the  
3 forum consists of organizations that are, you know, in the  
4 flood business: Reclamation districts, Department of  
5 Water Resources, the SAFCA, and, as I've said, other  
6 Central Valley flood agencies.

7 PRESIDENT CARTER: So is it staff's position that  
8 they will be requesting this kind of a setback on all  
9 future projects?

10 SUPERVISING ENGINEER FUA: Yes. As I've said,  
11 where it's feasible we would like to request that  
12 easement -- 50-foot easement. Although, you know, we  
13 don't want to be requiring removal of the six-inch  
14 structures just to achieve that 50-foot setback.

15 In addition, you know, we're also saying that  
16 there's an -- recommending that, you know, we do not take  
17 that area unless necessary and not preclude assisting  
18 agricultural activities, you know. In other words,  
19 farmers can continue to plant, you know, that area or grow  
20 in that area until we need it.

21 PRESIDENT CARTER: So if somebody has an orchard  
22 there, they continue to -- the trees remain in place until  
23 such time as the Rec Board decides that -- or DWR I guess  
24 decides that they need to be removed for maintenance  
25 activities?

1           SUPERVISING ENGINEER FUA: That's correct.

2 That's our recommendation.

3           PRESIDENT CARTER: Okay.

4           SECRETARY DOHERTY: One more question.

5           In that same area, it says changing Corps  
6 criteria. Does that mean future changes or does that mean  
7 changes up to this point?

8           SUPERVISING ENGINEER FUA: Future changes. Like  
9 there's some talk about reducing the seepage criteria  
10 from -- basic gradient from .5 to maybe .4.

11          PRESIDENT CARTER: Any other questions for Mr.  
12 Fua?

13          Okay.

14          VICE-PRESIDENT HODGKINS: I do have one.

15          It says a 10-foot easement in the area that's  
16 developed. And yet we have Corps white paper like this  
17 out in effect that says it has to be 15 feet or the levee  
18 will not be certifiable or certified in the future.

19          Can you help me to understand -- I'm not  
20 questioning the 10 foot. But I just was wondering either  
21 from staff's point or the applicant's point of view, given  
22 we have that guidance, and we have an issue coming why we  
23 aren't taking 15 feet in the area that's a little  
24 development includes taking more. Does staff have  
25 thoughts?

1 CHIEF ENGINEER BRADLEY: Yeah, I had thoughts.  
2 The regs actually only require the 10 from The Rec Board.  
3 The Corps has discussed the 15 feet. That's not a policy  
4 yet. I think it's up to the Board to make -- decide  
5 whether they would like that. We did have discussions  
6 with the applicant. And it looks like Mr. Shapiro would  
7 like to address this issue.

8 I'm letting him -- be more than happy to hear  
9 what he has to say.

10 PRESIDENT CARTER: Well, just to kind of follow  
11 on, Mr. Bradley, that the staff does not choose to be  
12 proactive in this case then in terms of requiring an  
13 additional five feet over the historical norm?

14 CHIEF ENGINEER BRADLEY: On segment 3, which is  
15 the north area, it's highly urbanized, we agree to the 10  
16 feet. We didn't make a field trip. And I don't know how  
17 much space is available up there. We were agreeable to  
18 the 10 feet. If the Board would like 15, I would be okay  
19 with that.

20 PRESIDENT CARTER: Okay. Mr. Shapiro.

21 MR. SHAPIRO: Good morning, Mr. President,  
22 members of the Board. Thanks for the chance to speak on  
23 this issue.

24 Three Rivers is an has always been supportive of  
25 additional easements being required along project levees.

1 The fundamental question from our perspective is whether  
2 it's appropriate as a condition of a permit where we're  
3 going in and upgrading the levee or whether it's really a  
4 separate activity. We have agreed to 50 feet in the  
5 southern area, and we're willing to absorb that as a  
6 project cost, a somewhat substantial project cost, but a  
7 project cost nonetheless. We think that a 15-foot  
8 easement in this area and all other areas would be  
9 excellent. Again, the question is is it really  
10 appropriate as a condition of our permit to try to improve  
11 the state system of flood protection.

12           Having said that, we would be very interested in  
13 partnering with the Reclamation Board jointly approaching  
14 Department of Water Resources, seeking Proposition 1E or  
15 Proposition 84 funding. We'd be happy as the local agency  
16 on the ground to work with the landowners to push this  
17 issue. It just comes down, is it really an appropriate  
18 requirement of this permit when it's not even an adopted  
19 standard yet by the Army Corps of Engineers?

20           PRESIDENT CARTER: If not as a part of this  
21 permit, when?

22           MR. SHAPIRO: We have every interest in  
23 partnering with you and your staff as soon as you'd like.  
24 If you would want to direct your staff to work with us,  
25 we're happy to work. We've actually done some preliminary

1 investigation to try to pull together what the costs would  
2 be. Again, the question is, is it really appropriate to  
3 be part of this improvement permit when it's not  
4 reasonably related in our minds to the work we're doing  
5 and it's not yet a standard? But we're doing the 50 feet  
6 because we recognize it's good flood management.

7 PRESIDENT CARTER: Okay. Any other questions?

8 Okay. So staff has made five requests and five  
9 recommends. One is to make findings on the environmental  
10 issues, to ask the Board to approve the draft letter, ask  
11 the Board to approve the draft cooperation agreement, ask  
12 the Board to approve the 50-foot easement in segment 1,  
13 and request the Board to approve Permit 18170.

14 Does the applicant wish to address the Board on  
15 any of those five requests?

16 MR. SHAPIRO: Thank you again.

17 We've reviewed the permit. And in conjunction  
18 with our discussion last time, I came prepared to speak to  
19 you about three issues. I've addressed most of the  
20 comments that I wanted to provide on the easement. We  
21 want to appreciate staff's work. Steve and Dan met with  
22 us. We looked at aerials. We went through the area in  
23 detail, came up with what we thought was a reasonable  
24 compromise. And we appreciate their time and their  
25 openness to considering what's on the ground as the Board

1 looks at this.

2           We do think it's worth the Board considering  
3 adopting a formal policy on this issue. We were able to  
4 work through it this time. But for us in the future and  
5 for applicants we think a policy is predictability. It  
6 also adds support to any eminent domain challenges that  
7 may be required to obtain the easements. And, finally, it  
8 would be good to have a policy to give more guidance as to  
9 the particular areas where it would be applicable. In  
10 this case, it was somewhat easy. We had a largely non-ag  
11 area and another area that was largely ag. And it allowed  
12 us to make that distinction.

13           But a Board policy we think would help applicants  
14 in the future and we would highly recommend that the Board  
15 consider that.

16           The new easement language that your staff has  
17 proposed in concept, not in actual writing yet, we think  
18 is essential. We've heard the Board's clear message that  
19 it didn't wish to disrupt agricultural operations for no  
20 reason. We agree. We also note that as a substantial  
21 financial impact. By not having to take out trees and  
22 orchards, we do not affect existing operations. And  
23 that's at least a quarter of a million dollars for us. So  
24 we appreciate staff's willingness on that. We think it's  
25 a reasonable compromise. We look forward to working with

1 your lands group and your staff counsel to develop that  
2 language in particular.

3 The two other issues that I wish to speak to are  
4 the issue of what I'm calling the levee lowering, and the  
5 other is the cooperation agreement.

6 Now, the good news on the levee lowering is it  
7 appears that we've worked out a position this morning and  
8 compromise with your staff. And, again, we appreciate  
9 your staff's work on that. I do think it's important just  
10 to briefly brief the Board on that, because it's another  
11 policy issue we think is worth the Board considering in  
12 the future.

13 In particular, this is -- Condition 19?

14 SUPERVISING ENGINEER FUA: Seventeen.

15 MR. SHAPIRO: Excuse me, 17. And we didn't  
16 notice when we were here a month ago that the language  
17 that was in the draft permit on Condition 17 would have  
18 had the impact potentially of making us lower the Feather  
19 River levee when we were doing construction on it.

20 And so we raised this issue when we first noticed  
21 it about a week ago with your staff. We've had a number  
22 of conversations back and forth. And we've ultimately  
23 been able to compromise. And we appreciate your staff's  
24 work. I'm going to explain what the compromise is and,  
25 again, though why we think it's important that there be a

1 policy in the future on this.

2           The condition as it was stated originally said  
3 that the levee shall be constructed to the higher of two  
4 things: Either to the basic survey taken in '57 or to  
5 as-builts constructed since then. So levee improvements  
6 are done. The Contractor produces as-builts that are  
7 supposed to document what was done. And then those  
8 documents are filed with the Reclamation Board and with  
9 the Army Corps of Engineers. And we were supposed to look  
10 at those two and determine which was higher and then not  
11 rebuild the levee any higher than that.

12           Our concern is that the as-built in this section  
13 of levee and other sections of levee aren't always  
14 complete and they aren't always accurate. In our  
15 preliminary surveys, but we never brought this to  
16 fruition, indicated we might have to lower the levee one  
17 to two feet upon rebuilding. And we raised that concern  
18 with your staff, and your staff agreed that we needed to  
19 try to come up with some reasonable compromise. And the  
20 reasonable compromise we've come up with -- and I'm sure  
21 Jay could give you the exact language, though I don't have  
22 it in my work packet -- was that it would now be the  
23 higher of three things: Either the two that were already  
24 mentioned or the actual 1957 design profile with the  
25 appropriate amount of freeboard.



1           That actually takes care of the problem for us.  
2   Our levees fit within those three, and so we will not have  
3   to lower our levees.

4           We do think, however, from a policy standpoint,  
5   this could present a problem in other reaches or for other  
6   applicants in the future. And in particular, it deals  
7   with the issue of where a levee may be higher than either  
8   the design or as-builts or the original survey, due to  
9   work that's done over the years and either not documented  
10   or never permitted in the initial situation.

11           And we take our guidance on this from the Army  
12   Corps of Engineers, which submitted a comment letter to  
13   the Board and to the staff on this issue. And the comment  
14   letter from the Army Corps of Engineers said that the  
15   height should be the higher of, if I recall correctly, the  
16   '57 design or current condition. And so in that case,  
17   there could be levees where the current condition is  
18   higher than the three criteria in our permit and an  
19   applicant would have to go and lower a levee.

20           We think the Corps criteria is the appropriate  
21   one. We would suggest the Board consider this as a policy  
22   issue for the future.

23           Having said that, we appreciate staff working  
24   with us. It's not an issue on our permit because of the  
25   compromise. And we're happy to be involved in any

1 discussions about that going forward.

2 Jay, I don't know if you have anything you want  
3 to add how to characterize it.

4 GENERAL MANAGER PUNIA: I think I have nothing to  
5 add. So we need to compromise. We will revisit this at  
6 our policy perspective at a later date.

7 BOARD MEMBER RIE: Are there any changes to  
8 Condition 64 in light of this conversation? Because it  
9 says that the permittee shall comply with all conditions  
10 in the letter from the Corps except for Condition C, which  
11 may be in conflict with Condition 17.

12 MR. SHAPIRO: I believe that because 17 has now  
13 been amended, as Jay can provide to you, or has provided  
14 to you in your work packets, to include the design plus  
15 three feet of freeboard, there's no longer inconsistency  
16 between the conditions in our case. But there would be in  
17 other applicants' cases, as I noted, if the levee  
18 condition is higher than any of the other standards. And  
19 that's why I do believe this is an appropriate policy  
20 issue for the future.

21 I don't want to bog our discussion down on it.  
22 I'm very appreciative of staff working with us so it was  
23 not an issue. But I can imagine that I will be before you  
24 one day for another applicant and it may be. So it would  
25 be nice to get ahead of that curve.

1           So unless there are further discussions on the  
2 levee lowering issue, I'd like to move to the third  
3 comment. And this is really the substantive one. And  
4 this is fundamentally a policy issue for the Board. It's  
5 not really a -- in my view, a staff issue. And I don't  
6 mean to indicate your staff doesn't have an opinion on it.  
7 But it really is a policy issue that I think the Board  
8 needs to consider.

9           And the issue here goes to the local agreement  
10 that Dan indicated and has included in your packet, the  
11 Cooperation Agreement that's in Attachment C. The  
12 Cooperation Agreement comes out of the requirement in  
13 Condition 78. And I didn't address this last month  
14 because this condition is new since last month, so I  
15 wasn't able to address it last month.

16           And I need to provide just a little bit of  
17 context and history here.

18           In February of 2005, Three Rivers was before your  
19 predecessor board with our permit applications for phases  
20 2 and 3, phases that have since been completed. And your  
21 predecessor board was very interested in using the power  
22 of the Reclamation Board to consider floodplain  
23 development. And I'm not saying this Board isn't. But  
24 that board had that as a very stated purpose.

25           One of the things that that board did was state

1 that it wanted to receive indemnity from RD 784 and Yuba  
2 County, the parent members of our Joint Powers Authority,  
3 so that the Board could make the point, if you will, to  
4 Yuba County that it should be considering development in  
5 floodplain areas.

6 We struggled at the local level very hard on  
7 that. I have with me today Randy Margo from Yuba County.  
8 He's the Assistant CAO, and he'll speak to this issue when  
9 I'm done. He was involved at that time too.

10 The Yuba County Board struggle very long and hard  
11 with this issue. It felt that it was being singularly  
12 held out to a different standard than anyone else. It  
13 pointed to the fact that there was no basis in the legal  
14 codes, in the regulations, or in case law that would allow  
15 the Reclamation Board to make that a condition of the  
16 permit.

17 But we went around and around, and at the end of  
18 the day that board felt that the project was the most  
19 important thing it could do for its community. And in  
20 particular, the Board -- the Reclamation Board at the time  
21 was very clear that it felt that this new standard would  
22 be a standard that should be applied to all applicants in  
23 the future; that any JPA that came before it should get  
24 the same standard, and these cities or counties that were  
25 members should provide indemnification as well.

1           This issue kind of fell away. We were issued the  
2 CalTrans encroachment permit by this Board. It did not  
3 have any indemnification requirement for the county. We  
4 received the Yuba Phase 4 permit from this Board. It did  
5 not have any condition within it for indemnification from  
6 the county. And SAFCA was issued a permit three months  
7 ago and it did not have any indemnification requirement  
8 for its parent agencies.

9           Now, SAFCA is a JPA created by statute. Three  
10 Rivers is a JPA created by agreement. The law says  
11 there's no distinction between them.

12           And I will confess that I thought that the issue  
13 was gone. But the Legislature, which is currently  
14 thinking about these issues and has been for a year and a  
15 half now, as exemplified by David Jones' AB 70, was  
16 basically taking up the issue. And the Board had made a  
17 policy decision it was going to let the Legislature do  
18 what the Legislature was going to do.

19           Unfortunately with the amended permit that we got  
20 last week, it raised this issue anew. And one of the  
21 things I did was I went back to the actual transcript from  
22 February of 2005. And I wanted to see what the discussion  
23 was at the time. And I'd like to read to you just a  
24 little bit of that transcript. And I have some copies I  
25 can distribute as well.

1 I stated at that time, "Scott Morgan  
2 and I have worked on a number of drafts  
3 back and forth on the indemnity issue.  
4 And we came to conceptually agreeing  
5 yesterday on something that he presented  
6 to the Attorney General. And I was  
7 prepared to recommend to my board -- to  
8 the County Board and RD 784. And those  
9 entities have considered that language.  
10 There was one, however, we believed to  
11 be a policy matter related to indemnity.  
12 This is a very difficult issue for the  
13 county because the county is not the  
14 applicant. And our understanding is  
15 that a member of the JPA that's before  
16 you has never before been asked to  
17 provide an indemnity. And the county,  
18 after a lot of difficulty, has expressed  
19 to me through its supervisors it will  
20 accept indemnification. But that  
21 willingness came as a result of  
22 statements made by President Marchand  
23 and Bill Edgar during the meetings where  
24 you explained that this is nothing  
25 special, this is nothing different, this

1           the nothing worse than everyone else is  
2           required to do."

3           We then made a proposal for some language that  
4 would have gone into our permit that would have said, if  
5 the Board doesn't do this in the future, then the county's  
6 indemnity goes away. We felt that was a reasonable way to  
7 approach it.

8           Secretary Bill Edgar responded to me and Mary  
9 Jane Griego, the Board of Supervisor member who was here:

10                 "Mary Jane and Scott, we are not  
11 going to adopt as a formal addendum to  
12 this a condition like this, because it  
13 would be viewed as underground  
14 regulations, which then goes through  
15 various legal procedures and policies.  
16 What I can say, and at least -- you  
17 know, as one member of the Board, and I  
18 think the rest of the Board concurs, in  
19 light of Paterno and in light of all of  
20 the problems we are facing, we have  
21 instructed the general counsel to seek  
22 in every situation the tough, hardest  
23 indemnification provision that we can  
24 possibly do in order to protect the  
25 State of California. And if you --

1           there will be no hold harmless that will  
2           be less onerous than this from the  
3           future. It will get worse as long as  
4           Scott Morgan is at the bargaining  
5           table."

6           I notice he's sick today, so maybe that means  
7 something.

8           (Laughter.)

9           MR. SHAPIRO: "That's where we are.  
10          And this is -- this is probably the  
11          first situation that I believe since  
12          Paterno. And so we are -- we are  
13          pushing the envelope on this, and we are  
14          going to continue. And for those  
15          applicants who are coming afterwards  
16          it's going to be worse, not better, and  
17          not -- certainly not more lenient than  
18          what you have today. I don't know how I  
19          can say it any other way. But that's my  
20          view."

21          And then President Marchand said,  
22          "Oh, I agree with you. And, again, as  
23          one member of the Board, why would we  
24          want to do anything less than this for  
25          anyone else? I mean I can't believe



1           it."

2                   And Ms. Griego of the Board of  
3           Supervisors said, "Thank you very much.  
4           I appreciate those comments. Because us  
5           being the first ones after the Paterno  
6           decision, we want to make sure that the  
7           standards for everyone else behind us,  
8           that they're the same."

9                   And I responded, "I will convey your  
10          words back to the Board of Supervisors."

11                  So I sit here two years later -- two and half  
12       years later imagining the conversation next week when I  
13       have to go up to Yuba County and explain to Yuba County  
14       that, well, they are being treated differently.

15                  Now I want to be clear. Three Rivers is not  
16       advocating that SAFCA should have to do this. We think  
17       the Legislature is considering a policy issue. Right now  
18       AB 70 is in the Legislature that would address this issue.

19                  The concern here is, how appropriate is it to ask  
20       Yuba County to indemnify the state when it is not the  
21       applicant and no other member of a JPA has been asked to  
22       do that?

23                  The cooperation agreement that has been prepared  
24       by your staff is fine. I don't have a problem with it  
25       generically. There are a few tweaks that I would make

1 here and there that I suspect your staff would not  
2 disagree with. But it does do two fundamental things that  
3 are troubling: One is it requires indemnification from  
4 the county. And the other is it makes the county the  
5 guarantor of RD 784's maintenance. It says if 784 doesn't  
6 maintain the levees properly and the state has to go in  
7 and do it, then the state can charge Yuba County.

8           And that's simply, in my mind, inconsistent with  
9 your current water law code, which says if the state  
10 creates a maintenance area, it charges the beneficiaries,  
11 not the entire county.

12           So, I realize that this is a hard issue to  
13 grapple with, and I wish I didn't have to bring it to the  
14 Board at such a late date. Unfortunately we just had the  
15 condition come last week.

16           And so the question that I would have for the  
17 Board is whether you look to that moral agreement that the  
18 last board made in February and can fine a legitimate  
19 basis to say that that indemnity really shouldn't apply  
20 anymore and the Legislature will set the appropriate  
21 policy.

22           I have copies of the transcripts and I can  
23 provide them.

24           PRESIDENT CARTER: Thank you.

25           Any questions for Mr. Morgan -- I'm sorry -- Mr.

1 Shapiro?

2 MR. SHAPIRO: I can play his role too if you'd  
3 like.

4 PRESIDENT CARTER: Maybe another day.

5 SECRETARY DOHERTY: Just as a comment, Scott. I  
6 asked a question just a few minutes ago about changing  
7 Corps standards and things change and technologies change.  
8 Everything changes.

9 MR. SHAPIRO: Here it seems to be changing,  
10 changing back, and then changing again when we're before  
11 you though.

12 SECRETARY DOHERTY: Depends on the technology  
13 that's involved and the situation.

14 MR. SHAPIRO: Well, the SAFCA application that  
15 you just heard was a slurry wall application. This is a  
16 slurry wall application.

17 PRESIDENT CARTER: Mr. Punia.

18 GENERAL MANAGER PUNIA: I think our legal counsel  
19 can differentiate the case of SAFCA and the TRLIA. So I  
20 think Nancy Finch is prepared to address this issue.

21 STAFF COUNSEL FINCH: I'll see how prepared,  
22 because this is the first time I've heard some of these  
23 issues come up. So I'll do my best.

24 I'll just kind of go through the points that I  
25 heard. And hopefully I will cover all the major ones.

1           So, as you know, I wasn't here in 2005, so I'll  
2 speak as best I can to all of this. My understanding of  
3 Phase 2 and 3 that there was -- the Board did receive  
4 indemnity. And it's not only -- it didn't begin with the  
5 previous board that indemnity was required by the Board.  
6 There actually is statutory basis in the Water Code where  
7 the state is required to hold the feds harmless and locals  
8 are required to hold the Rec Board harmless. So there is  
9 statutory basis beyond the previous board's decision.

10           And regarding Yuba County being singled out, as I  
11 mentioned, there is a basis in law that indemnification  
12 has been asked for in the past in various situations.

13           And regarding SAFCA, it is a different situation  
14 statutorily, because, as Scott mentioned, that SAFCA is  
15 created by statute. And actually in that statute, they  
16 can assess to, let's see, fulfill liabilities. So if they  
17 need to indemnify the state, they can; and by California  
18 statute, they have a provision where they can assess and  
19 pay the state back. And TRLIA does not at this point. I  
20 don't if they're --

21           MR. SHAPIRO: Actually we do.

22           STAFF COUNSEL FINCH: Under the statutes?

23           MR. SHAPIRO: No, under our JPA agreements.

24           STAFF COUNSEL FINCH: Okay. But that's  
25 agreements, not under state statute, right? The state

1 statute in the appendix to the Water Code.

2 MR. SHAPIRO: I apologize for jumping in. I  
3 should wait for you to provide your answers and then I can  
4 respond at the end.

5 STAFF COUNSEL FINCH: No, I'm speaking of in the  
6 Water Code itself, the appendix to the Water Code, the  
7 SAFCA provisions. And if I understand -- right the TRLIA  
8 does not have the same. So they are different in that  
9 way.

10 And regarding allowing the Legislature to act.  
11 And it seems that it appears the previous board had a  
12 certain policy -- you know, a view on things which was  
13 consistent with statute. And then I don't know what  
14 happened when you came in -- the new board came in. But I  
15 don't think, it appears to me, there was a conscious  
16 choice to allow the Legislature to take this on; and that  
17 there are, as I keep repeating, statutes in place. Even  
18 though I, you know, obviously didn't have time to fully  
19 research the issue, but there is that basis.

20 And I guess it's up to the Board to tell us if  
21 there was a conscious choice to leave it up to the  
22 Legislature.

23 And also I know you mentioned the underground  
24 regulations issue. And I know Rec Board counsel and staff  
25 is very sensitive to the fact that we do not want to

1 create underground regulations. And we are looking  
2 towards drafting new regulations to deal with a variety of  
3 new issues that have come up. As you know, things are  
4 more complicated these days. And also that the Paterno  
5 decision as well influences what is happening today  
6 regarding the hold-harmless agreements.

7 And also, as I said before, I can't speak to what  
8 has happened recently with the hold-harmless agreements  
9 and why it appears that some permits have them, some  
10 don't. The staff does advocate that we should have  
11 hold-harmless agreements in all the permits. It's  
12 unclear, perhaps there's been some oversight in the  
13 drafting because so much has gone through. As I said, I  
14 can't speak to that.

15 And as Scott did say, this is a tough issue and  
16 it's been presented at a very late date. And so -- there  
17 is a lot coming up right now and I'll assist as much as I  
18 can. I'm not fully prepared to discuss it in depth if it  
19 needs a bigger discussion. But I hope I've given you some  
20 thoughts on the matter.

21 PRESIDENT CARTER: Okay. Thank you.

22 Any questions for Ms. Finch?

23 MR. SHAPIRO: Would it be appropriate if I  
24 respond to --

25 VICE-PRESIDENT HODGKINS: Yeah, I'd like to let

1 Scott respond.

2 PRESIDENT CARTER: Okay.

3 MR. SHAPIRO: I agree that there's a statutory  
4 basis for indemnification. But the statutory basis is  
5 against an applicant. And Yuba County is not the  
6 applicant. Indeed your standard permit, you'll notice  
7 that the permit has small print and then large print. And  
8 the small print, first 12 conditions of the standard  
9 conditions. And so number 10 says, "The permittee is  
10 responsible for all personal liability and property damage  
11 which may arise on a failure on the permittee's part to  
12 perform the obligations under this permit. If any claim  
13 of liability is made against the State of California, or  
14 any departments thereof, the United States of America, a  
15 local district or other maintaining agency and the  
16 officers, agents or employees thereof, the permittee shall  
17 defend and shall hold each of them harmless from each  
18 claim."

19 So it's not that you've been issuing permits that  
20 don't provide for indemnification. You have. And this is  
21 in SAFCA's, and SAFCA provided indemnification. And Three  
22 Rivers does in every permit you provide by accepting the  
23 permit.

24 The issue is one of fundamentally going through  
25 the applicant and trying to get to the agencies that

1 created or make up the applicant. And so while I agree  
2 there's statutory authority for indemnification, I don't  
3 know of any statutory authority that explicitly states you  
4 can go after the parent members of the agency.

5 In regard to the underground regulations point, I  
6 agree with Nancy it's a concern and you have to be careful  
7 with it. But your election to include or not include Yuba  
8 County is not really an issue of underground regulations.  
9 In fact, I could argue that your unofficial policy, as may  
10 be stated, the argument that Nancy just made, of, "Well,  
11 we request and require indemnification from parents when  
12 it's an agreement-created JPA, but we don't when it's a  
13 statutorily required JPA," might be viewed as underground  
14 regulations. Because you seem to be making a distinction  
15 on that basis without really providing notice to the  
16 public about it.

17 I agree Paterno is an issue. Indemnification is  
18 appropriate. Three Rivers is not here saying, "We're not  
19 going to provide it." We're saying, "Policy-wise, do you  
20 need it and should you get it from Yuba County?"

21 And then, finally, on the issue of SAFCA being  
22 statutorily created, I continue to not understand how  
23 that's a relevant distinction. SAFCA under statute can  
24 assess. Three Rivers under contract can assess. We both  
25 have assessment powers. We are hoping to have a 218



1 election this fall. SAFCA just completed a 218 election.  
2 Both agencies, if there was ever a judgment and the state  
3 went after them, would have to conduct 218 elections. So  
4 whether we were created by the people in the white  
5 building over there or created by the people in the beige  
6 building in Yuba County, it doesn't matter; the powers are  
7 essentially the same. And it doesn't seem to be a  
8 relevant distinction that you would go after one and not  
9 the other.

10 Fundamentally, the question is, is it appropriate  
11 to go after the land-use agency that created Three Rivers?  
12 And if it is, it's good for the goose, it's good for the  
13 gander. I believe it's not appropriate.

14 And I apologize, but I never gave a chance for  
15 Randy Margo at the county to speak. And I wonder if this  
16 would be an appropriate time for him to share his remarks.

17 STAFF COUNSEL FINCH: Actually I'd like to  
18 respond first, if you don't mind --

19 MR. SHAPIRO: Sure.

20 STAFF COUNSEL FINCH: -- to make some  
21 distinctions.

22 Scott is speaking in terms of why are we going  
23 after the land-use agency. And the Rec Board position is  
24 we're looking for a financially responsible agency. And  
25 perhaps you can clarify how TRLIA -- well, one thing I

1 understand about SAFCA is they have ability to assess to  
2 pay for any liability that incurs into their projects.

3 Now, my questions to you is: 1) Does TRLIA have  
4 the ability to assess to pay for any liability that is  
5 created? And how long will TRLIA be in existence? I mean  
6 is it -- because like, you know, California statute based  
7 on -- versus the agreement.

8 MR. SHAPIRO: Sure. Well, I think that the issue  
9 of perpetuity or continuity is a legitimate issue. And it  
10 seems that RD 784 is the appropriate answer to that. RD  
11 784 is going to be the one who maintains these levees in  
12 to perpetuity. And just as a normal RD that would come  
13 before you to fix its levees would be the one providing  
14 indemnification and would be the one into the future to  
15 indemnify and hold harmless the state, that seems  
16 appropriate.

17 The fact that Yuba County made the mistake of  
18 entering into the JPA and is now being punished for it --  
19 and I know that's not your motivation. I know you're not  
20 trying to punish them. But from a local perspective  
21 that's how it feels when they're the only ones who are  
22 required to provide indemnification.

23 STAFF COUNSEL FINCH: Yeah, in response to that  
24 as well, the reason RD 784 does not appear to be a good  
25 entity to have the indemnification, they don't have the

1 ability to raise money. And they have shown in the past  
2 with previous floods, they don't indemnify the state. And  
3 so it's true, we -- you know, once they got up and say,  
4 "We're looking for a financially responsible agency," that  
5 is part of this agreement

6 MR. SHAPIRO: Well, they've never been asked to  
7 indemnify the state out of the '86 or '97 floods. The  
8 state did not request indemnification from RD 784.

9 STAFF COUNSEL FINCH: And so are you -- so you  
10 believe that 784 could raise the money and indemnify the  
11 state based on the way it's structured?

12 MR. SHAPIRO: I believe subject to Proposition  
13 218 they could, just as SAFCA subject to proposition 218  
14 could.

15 STAFF COUNSEL FINCH: Okay.

16 SECRETARY DOHERTY: Scott, at the last meeting we  
17 had one of the questions I asked you was how long TRLIA  
18 would be in existence, because this was one of the things  
19 that concerned me.

20 MR. SHAPIRO: And the answer remains that we have  
21 a core mission. Our mission is to improve the 784 levees.  
22 I think many of us personally hope that that mission may  
23 expand to address other issues in Yuba County. At the  
24 moment, the policy-makers have not changed it. And that's  
25 why all of our long-term planning assumes 784 to step into

1 the maintenance role.

2 So, again Mr. Margo is here.

3 PRESIDENT CARTER: Yes, why don't we hear from  
4 Mr. Margo.

5 MR. MARGO: Good afternoon, Mr. President,  
6 members of the Board. For the record, my name is Randy  
7 Margo. I'm the Assistant County Administrator for the  
8 County of Yuba.

9 I first want to express my appreciation from the  
10 county for having this special meeting and to try and move  
11 promptly and timely on these very complicated issues and  
12 to have this special meeting that will obviously help us  
13 provide greater flood control for the area on the Feather  
14 River.

15 With that said, I want to add some emphasis to  
16 Mr. Shapiro's remarks; and first by providing a little bit  
17 of context and background.

18 One of the things that concerned the county when  
19 we were moving forward on Phases 2 and 3 was the  
20 indemnification issues. And to understand it from a  
21 county perspective, you have to understand that many  
22 people live outside of the flood area. However, they do  
23 live in a fire zone that is very hazardous and fires occur  
24 on an annual basis. And so for those residents and for  
25 their representatives, there's always the question of,

1 "Well, why do we have to put our property at risk for  
2 people living in a flood zone when that same corresponding  
3 indemnification doesn't occur for people who may live in a  
4 fire zone or perhaps in an earthquake zone along the  
5 coast?"

6 And so that was a huge leap for the Board to get  
7 over -- to understand how flooding is different than major  
8 fires or major earthquakes.

9 Nonetheless, the reason why the Board went along  
10 with the indemnification proposal was that we felt that  
11 this was a critical project in order to provide public  
12 safety, and that we didn't want to risk the project  
13 following through because of the indemnification issue.

14 And we asked for mainly one caveat to that. And  
15 that was simply that we be treated the same as any other  
16 public agency or jurisdiction in the State of California.  
17 And it was represented to us by the Board at that time  
18 that that would be the case, that they would hold that  
19 standard to every entity that came in front of the State  
20 Reclamation Board for an encroachment permit. And so we  
21 could go back to our residents and say that, "Yes, we did  
22 have to agree to this indemnification, even though we had  
23 issues with it. Nonetheless, we have been informed that  
24 the Board will hold that standard to every other applicant  
25 that comes before it."

1           Now, we have found according to the facts  
2 presented by Mr. Shapiro that that has not been the case  
3 and there are these nuances as to why it is not the case.  
4 And so it causes some pause on our behalf as to why.

5           One of the things that we do as a county and you  
6 do as the State Reclamation Board is to provide that the  
7 law is consistently and fairly carried out. Our  
8 credibility is at stake both from the county level and  
9 through state agencies when the law and those regulations  
10 are not consistently and fairly applied. And that is  
11 simply what we're asking for today.

12           A lot has been mentioned about, you know, the  
13 state and, you know, where they're going with this. And  
14 we agree to adhere to any state law that comes down,  
15 whether it be AB 70 or some other legislation, that will  
16 be fairly and consistently applied to all local public  
17 agencies.

18           What we do have an issue with is that we are, in  
19 essence, being singled out. And it's perplexing to us.

20           One of the things that's kind of interesting to  
21 note, and just as sort of an aside to how counties are  
22 financed. The majority of our money for our budget comes  
23 from the State of California. In essence, any type of  
24 indemnification on liability will revert back to the  
25 state, because of how the state funding mechanisms work

1 and the state subventions. And so I'm just wondering  
2 about the practicalness of this as well. And I guess with  
3 that, I would take any questions that the Board might  
4 have.

5 PRESIDENT CARTER: Are there any questions for  
6 Mr. Margo?

7 VICE-PRESIDENT HODGKINS: In terms of the  
8 liability reverting back to -- I'm trying to get at what I  
9 think is a fundamental issue, which I don't think anybody  
10 out there has really said, which is that if the county is  
11 part of the indemnification and there were to be a  
12 judgment, that the judgment would in effect -- what  
13 priority would that have legally in the county's budget?  
14 Would you be allowed to defer payment of the judgment so  
15 that you could continue to provide, share, fire, whatever  
16 else you brought, provide from whatever discretionary  
17 remedy you have?

18 MR. MARGO: Mr. Hodgkins, let me just give you  
19 some context to your question. Under the Paterno lawsuit  
20 the judgment was approximately \$455 million. The county's  
21 general fund this year is \$33 million. The county's total  
22 budget including all federal and state subventions is \$163  
23 million. And so that's the order of magnitude difference  
24 from a lawsuit that transpired back in 1986 and dealt with  
25 property values at that time.

1           VICE-PRESIDENT HODGKINS: But if there was a  
2 judgment, would the county legally have to pay it from  
3 whatever revenues were available?

4           MR. MARGO: Well, that's I guess a legal  
5 question.

6           One of the things that I would wonder about is  
7 that -- and, again, it gets back to how the counties  
8 function. Many of the services that we provide are state  
9 functions. The entire health and welfare system as an  
10 example; child support services; the criminal justice  
11 system, you know, the courts, et cetera. And so I don't  
12 know the answer to that question, but I know that it would  
13 be very difficult

14          MR. SHAPIRO: My understanding -- and I don't do  
15 general government work, so take this with a grain of  
16 salt. But my understanding is that the 33 million that  
17 Randy mentioned, the general fund amounts, would be  
18 available to pay a judgment subject to certain  
19 requirements the county still has even as to general fund  
20 allegations, such as paying a sheriff. And indeed if all  
21 33 million went to pay a judgment, then the county could  
22 be sued for not providing law enforcement.

23          So what you end up talking about is a county  
24 basically giving up all non-entitlement programs, except  
25 public safety, for 5, 10, 15 years as a practical matter.



1 And that's why, in my mind, this is a symbolic issue. And  
2 the question is, what is it symbolic of? And I think it's  
3 symbolic of seeking land-use authorities to put their name  
4 on the line. And if that's the real issue, I mean if  
5 that's the Board's position, we want to seek land-use  
6 authorities to put their name on the line, then we're back  
7 to the original question: Isn't that appropriate for  
8 SAFCA's case? Isn't that appropriate for Wheatland, where  
9 an RD came before you and got an application and the City  
10 of Wheatland wasn't approached? Isn't it appropriate up  
11 and down the valley, Lathrop RDs come in -- the City of  
12 Lathrop?

13 So it's an application issue. Why are you doing  
14 if? Is it symbolic? Does it make sense to do? And if  
15 it's the symbolism of putting the city's name on the line,  
16 then isn't the Legislature grappling with that right now  
17 in considering bills that would do it?

18 MR. MARGO: You know, there's one other point  
19 that I'd want to make, and that has to do with the  
20 insurance issue. One of the things that the county did,  
21 and we thought it was a good thing to do in conjunction  
22 with the State Reclamation Board, is that we require the  
23 developers in that area to provide flood insurance until  
24 the levees were built and certified. And that at that  
25 time was unknown throughout the State of California. And

1 the county has emphasized in every public meeting the need  
2 for individuals who live in that area to obtain flood  
3 insurance.

4           It's still an individual decision to live in  
5 areas that are prone to flooding. But I think we can  
6 do -- and I would look for the State Reclamation Board and  
7 its assistance to maybe look at some type of mandate for  
8 flood insurance for people who live in that area of  
9 flooding and flood hazard. And I think that would be a  
10 more appropriate approach to this.

11           PRESIDENT CARTER: Thank you.

12           Any other questions of Mr. Margo?

13           BOARD MEMBER RIE: Yes. Anybody can answer this  
14 question.

15           If you go back to the agreement and you look at  
16 the actual language, it says that "the local sponsors  
17 shall hold and save the State of California harmless from  
18 any and all claims arising out of work performed by the  
19 government." Is that the State of California Government?

20           So if the State of California is negligent in  
21 some manner with respect to these levees, should Yuba  
22 County be responsible for any claims that result?

23           SUPERVISING ENGINEER FUA: Actually the  
24 "government" there means the United States Government, not  
25 the state.

1           MR. SHAPIRO: And it's not limited to just the  
2 government. It's basically arising out of any and all  
3 claims or damages arising out of a project, including  
4 responsibility for claims or damages arising out of work  
5 by the United States.

6           So if the damage -- if the project failed because  
7 it wasn't built correctly, if it failed because RD 784  
8 didn't maintain it correctly, if it failed because you  
9 imposed a condition in here that created a problem with  
10 the levee, if it failed because you or the federal  
11 government went in and made changes later, any of those  
12 things require indemnification by Yuba County.

13          BOARD MEMBER RIE: So whether it's the State of  
14 California, Army Corps of Engineers, the federal  
15 government or any of its employees, if we do anything  
16 negligent with respect to these levees, Yuba County is  
17 holding us harmless --

18          MR. SHAPIRO: Yes.

19          BOARD MEMBER RIE: -- for that?

20          MR. SHAPIRO: Yes.

21          BOARD MEMBER RIE: Is this something your board  
22 of supervisors would agree to?

23          MR. MARGO: Well, that's something that we're  
24 going to have to visit with our board about. That's the  
25 whole point of the discussion here, is that there is

1 consternation over this amendment, if you will, to the  
2 agreement

3 PRESIDENT CARTER: Okay. Any other questions?

4 We've got a number of people from the public that  
5 wanted to address this as well.

6 STAFF COUNSEL FINCH: I would just like to make a  
7 couple comments.

8 PRESIDENT CARTER: Yes.

9 STAFF COUNSEL FINCH: When they were speaking  
10 about the county budget and all that 33 million, that's  
11 the point of finding and to do that, to make an  
12 assessment -- make an additional assessment for any money  
13 they may owe for damages or liabilities.

14 And then they also mentioned how the  
15 Legislature's grappling with this at this time. It may  
16 happen that the Legislature will come up out with some --  
17 a new statute that overrides what the Reclamation Board is  
18 doing at this time. But at this point, staff  
19 recommendation is to include the hold-harmless agreement  
20 in this agreement, the clause.

21 And also, in terms of -- one thing to keep in  
22 mind with a hold harmless, the practical reality of a  
23 situation is -- you know, look at the Paterno lawsuit. If  
24 a levee fails and we're trying to find blame and all that,  
25 that's a process of itself in addition to this one.

1           PRESIDENT CARTER:   Okay.   Thank you.

2           BOARD MEMBER BURROUGHS:   Mr. President, Steve has  
3 a comment.

4           PRESIDENT CARTER:   Yes, Mr. Bradley.

5           CHIEF ENGINEER BRADLEY:   Yes.   Mr. Shapiro had  
6 several things he was talking about.   But the one thing I  
7 wanted to correct, when he was talking about Special  
8 Condition 17, he said there were three conditions there:  
9 The 1957 profile, the as-built drawings, or the '57  
10 profile plus three feet.   That last was not correct.   And  
11 I think I'll read into the record 17, which says:

12                 "The maximum levee crown elevations of the levee  
13 reaches where construction activities affect the levee  
14 crown area shall be limited to the maximum crown elevation  
15 shown for the same reaches on the U.S. Army Corps of  
16 Engineers' Sacramento River Flood Control Project,  
17 California, Levee and Channel Profiles, dated March 15th,  
18 1957, or as modified by the Corps of Engineers and shown  
19 on as-built drawings provided to the Reclamation Board  
20 subsequent to March 15th, 1957, or other documentation of  
21 authorized levee improvements acceptable to the  
22 Reclamation Board."

23                 We didn't limit it to the 1957 profile plus three  
24 feet, because there may be cases where there are other  
25 documentation that comes to the Board that we know

1 about -- we may not have the as-built but we will know  
2 about those things. And so we wanted some ability to make  
3 those decisions based on, you know, discussions with the  
4 Corps, discussions with the applicant.

5           The reason the '57 profile plus three feet was  
6 important in this area is that the '57 profiles do not  
7 have the three feet of freeboard required for the system.

8           In the turnover memorandum from the Corps of  
9 Engineers to the Board, the project was not complete at  
10 that time. And there was a little over half a million  
11 dollars of federal and state money that was allocated to  
12 fixing the left bank levee of the Feather River. And so  
13 that was to be raised up to that three feet. That  
14 occurred I believe in the early sixties, and there are  
15 as-built drawings that the Corps has in around 1961. Or  
16 they have at least reference to them. But we haven't  
17 actually found the drawings yet, but they have reference  
18 to them.

19           There were also things that were done after the  
20 1997 flood. There was the levee reevaluation in that  
21 area. There was also the Site 7 work and the Site 7  
22 extension work of the south end where the pump station is.

23           So there's lots of information out there. We  
24 didn't want to be tied to just the '57 profile plus three  
25 feet.

1           PRESIDENT CARTER: A question I have with regard  
2 to this is: At the end of day, are there any levees that  
3 are going to be lowered on these two segments as a result  
4 of this permit or this work?

5           CHIEF ENGINEER BRADLEY: In general I'd say no,  
6 because most levee raising out there, prior to recent  
7 history when development in the valley had made it  
8 possible for public agencies other than the Rec -- other  
9 than the state or the federal government to raise levees,  
10 were all done under federal projects.

11           So I think there could have been work that was  
12 done out there where somebody left a pile of dirt that  
13 there's no reason for that shows a two-foot hump in some  
14 localized area. But if you're talking about a raise over  
15 a significant period, I would expect that to have occurred  
16 under a federal project.

17           Does that make sense?

18           PRESIDENT CARTER: Yes and no. I think it's  
19 directionally improper to be talking about lowering levees  
20 when --

21           CHIEF ENGINEER BRADLEY: We're not lowering  
22 levees. They're going to be cutting these levees down for  
23 the slurry wall. What they won't be allowed to do is to  
24 raise them over anything that's been authorized.

25           BOARD MEMBER RIE: What about over time some

1 farmer went out there and raised the levees without a  
2 permit?

3 CHIEF ENGINEER BRADLEY: Then that's an  
4 unauthorized raise.

5 BOARD MEMBER RIE: Are we asking them to go back,  
6 and whatever dirt or base rock or asphalt is there, remove  
7 it now and bring it back down?

8 CHIEF ENGINEER BRADLEY: They're going to be  
9 removing that to begin with to put in the slurry wall.  
10 They cut the levee down to put in the slurry wall. And  
11 then they would rebuild it up to the authorized profile.

12 BOARD MEMBER RIE: So you're saying when they  
13 rebuild it, they can't rebuild it to the existing  
14 elevation that it is today?

15 CHIEF ENGINEER BRADLEY: If it looks like it's an  
16 illegal raise, no. Now, if you're talking about lowering  
17 the overall elevation two feet or something, I think we'd  
18 have to look at that.

19 A farmer's not going to go out and raise it two  
20 feet because it's very expensive to do that kind of work.

21 But I can see, in the future what would happen is  
22 somebody comes to the Board and says, "Oh, out there we've  
23 got two more feet than it shows on the drawings," because  
24 they went out and they piled a bunch of dirt up there  
25 prior to the project so that they could get higher



1 elevation.

2           It's the Board's -- part of the Board's reason  
3 for being is to make sure one side of the flood control  
4 project doesn't raise a levee and flood the other side.  
5 So you don't have these levee wars that are going on where  
6 you're raising on each side.

7           MR. SHAPIRO: And I just wanted to note that the  
8 first point Mr. Bradley made, that we didn't read the  
9 condition in detail. I don't disagree with that. I don't  
10 have a printout of the condition. So when I was telling  
11 you my understanding, I was characterizing it, because I  
12 don't have a printout. So I don't disagrees with that.

13           But the questions the Board was asking about  
14 whether this condition -- cases could require the actual  
15 lowering of a levee is the very reason why we think a  
16 policy from the Board is appropriate going forward.

17           And I know Ric has talked with the Army Corps as  
18 recently as this morning and -- Thank you -- and may have  
19 something to add.

20           MR. REINHARDT: Ric Reinhardt, Three River's  
21 Program Manager.

22           I'm in agreement with Steve's statements. I  
23 think the challenge here is the way the special condition  
24 is worded, is it's thrown out a very broad net to capture  
25 what might be a very few isolated incidents where the

1 levees have been raised.

2 I think that from a practical standpoint, in  
3 working on a number of projects throughout the system,  
4 what I found is that there isn't a lot of as-built  
5 information and that there is variance in the top of  
6 levees between what exists out there today and what is  
7 shown on the 1957 profiles and as-builts that we've been  
8 able to gather. And in at least three projects that I  
9 looked at as part of preparing to come here today, I noted  
10 significant differences between tops of levees in other  
11 locations and what's shown on the 1957 design profile.

12 And that's why we recommend that while we've  
13 resolved it for this application, we think there is an  
14 issue that the Board needs to grapple with. And in our  
15 discussions with the Corps, the Corps' position on this is  
16 that you restore it to the higher of either the 1957  
17 design or existing condition.

18 VICE-PRESIDENT HODGKINS: May I ask a question?

19 If you're allowed to restore the levees in the  
20 areas where you do work to the '57 profile plus three  
21 feet, are you okay with that?

22 MR. REINHARDT: Yes, we are.

23 VICE-PRESIDENT HODGKINS: Will this condition  
24 allow them to do that?

25 CHIEF ENGINEER BRADLEY: Yes.

1           VICE-PRESIDENT HODGKINS: Okay. So the issue for  
2 this particular project at this time is resolved.

3           There is a broader question that the Board may  
4 choose to pursue separately as to whether or not we think  
5 it's appropriate to require applicants, or people in  
6 general, to bring their levees down to the highest  
7 approved elevation that exists. But it's a separate  
8 question. It's not an issue for the permit. Don't  
9 confuse your permit with a public policy issue.

10          MR. REINHARDT: I believe Mr. Shapiro started off  
11 our presentation making that statement.

12          VICE-PRESIDENT HODGKINS: Okay. I think he did.  
13 But I'm not sure it was said real clearly. So I want to  
14 clarify that.

15          PRESIDENT CARTER: Okay. So let's move on.

16          Mr. Smith, did you want to -- Dr. Smith -- I'm  
17 sorry -- would you like to address the Board?

18          DR. SMITH: Good afternoon, President Carter and  
19 other esteemed members of this Board. I'm Dale Smith. I  
20 speak for my company Alfa Omega Associates and CCRG, Inc.

21          I note that nearly one hour was given to the  
22 proponent here. I always script my material, as you know,  
23 so I'll run through it very quickly. It will take a  
24 little bit of time, but not a lot.

25          And I consider this hearing to be a little bit

1 ill-advised, if not illegal, because of the serious flaw  
2 in The Rec Board procedures for even to be hearing the  
3 TRLIA matter. And nothing I've heard in the last hour has  
4 changed my opinion on that at all.

5 Now, I have provided a packet for you. I hope  
6 that material is there. If it isn't, she'll give it to  
7 you. And there's a number of documents in there, and I  
8 prepared it especially for this meeting. And all the  
9 documents that I'm going to talk about are there.

10 And the first one -- and it's a very important  
11 set of documents. And these are three editorials -- two  
12 editorials and a written -- a report from the Sacramento  
13 Bee, all in these first days of June this year.

14 The first one, "Flood Liabilities: Bill to  
15 reduce state risk faces key test, that's from 6/5.

16 The June 1st editorial, "Flood breakthrough:  
17 Governor wants to limit floodplain building."

18 And then Deb Kollars' article of 6/6/07,  
19 "Governor floats floodplain development curbs."

20 Now, the California Reclamation Board, by law, is  
21 the flood management agency for the Central Valley. And  
22 this Board both has the authority and the legal basis for  
23 taking charge of this most vital state function of  
24 floodplain management.

25 The United States transferred ownership of the

1 Central Valley Project levees to California in 1953. And  
2 I can't understand why the state doesn't acknowledge that  
3 the project levees are not reclamation district levees.  
4 They belong to the State of California. No public purpose  
5 is solved by having local agencies haphazardly design  
6 components of a state-owned Central Valley-wide system.  
7 It's not even legal.

8           You're all very familiar with the Paterno case.  
9 It's been discussed a number of times here today. Who  
10 paid for the Linda levee failure in Yuba County, the state  
11 or RD 784? The state, of course. RD 784 did not have to  
12 pay because the Linda levee reach that failed was a  
13 component of the state-owned Sacramento River Flood  
14 Control Plan.

15           And it just looks like in this last hour, only  
16 brings it out stronger, that Yuba County and the state are  
17 acting together to increase the risks/costs for all of us.

18           Imagine being a resident in the RD 784. You're  
19 flooded out in 1986, you're flooded out in 1997. And  
20 you're still at risk today and facing flooding next  
21 winter, where the state wastes valuable time conspiring  
22 with Yuba County to limit what damages the citizens might  
23 collect from the next flood.

24           And the truth of the matter is: Does Yuba County  
25 have the \$455 million or more that might be needed, or

1 does RD 784 or TRLIA? I think the answer is none of them  
2 have it.

3 Now, all floodplain development permitted today  
4 shortchanges the public for a levee infrastructure cost.  
5 But it's never -- hardly ever mentioned, much less taken  
6 care of.

7 Strong restrictions that would ensure that  
8 developers pay at the outset their fair share of the levee  
9 infrastructure is what should happen. And I think the  
10 bills that are in the Assembly and in the Senate now are  
11 bringing -- coming towards that. The state must accept  
12 its liability and responsibility and then wield -- direct  
13 Board's authority to get this job done.

14 Now, that first Sac Bee editorial: "Over the  
15 last week the Administration has quietly floated a  
16 proposal that is rocking the flood management world. The  
17 proposal is marked 'confidential and privileged.'" And I  
18 say, "Hooray." This document is in your packet.

19 And the editorial made a very telling point,  
20 saying, "Currently officials don't know which levees in  
21 the Central Valley even meet the minimal 100-year level of  
22 flood protection." And that's a sad story.

23 Now, back on 11/1/05, DWR Director Lester Snow  
24 said, quote, "The catastrophic impact of a significant  
25 earthquake puts thousands of lives and billions of dollars

1 at risk."

2           So who is responsible? You know, fingers are  
3 pointed in every direction. But I don't state they're  
4 ever pointed in the right direction. And excuse me for  
5 pointing my finger up this way right now, but it is the  
6 California Reclamation Board legally that has this  
7 responsibility, not the DWR. The DWR works for the Rec  
8 Board.

9           You know, your mission statement has a very  
10 interesting three points to it. It's in your packet  
11 there.

12           1. To control flooding along the Sacramento and  
13 San Joaquin rivers and their tributaries in cooperation  
14 with the U.S. Army Corps of Engineers.

15           2. To cooperate with various agencies of the  
16 federal, state, and local governments in establishing,  
17 planning, constructing, operating, and maintaining flood  
18 control works.

19           3. To maintain the integrity of the existing  
20 flood control system and designated floodways through the  
21 Board's regulatory authority by issuing permits for  
22 encroachments.

23           Now, the Rec Board has the authority over  
24 anything that interferes or could interfere with carrying  
25 out the plan of flood control in the Central Valley. And

1 that Rec Board authority is with you, not with the DWR.  
2 And it's based on California law. I'll just give three  
3 quotes: Cal Water Code paragraph 8710; Cal Government  
4 Code paragraph 65302; CEQA Guidelines, Appendix G and 7 --  
5 or 6 rather, just to name three laws.

6 Now for three years, the CCRG has been saying  
7 this in these chambers, on our website, in our letters to  
8 you, our letters to USACE, FEMA, the FBI, the Governor,  
9 and hundreds more. But it seems like nobody even wants to  
10 read the law, much less follow it.

11 For some months now your Board has had only five  
12 members. As you know, this recently caused serious  
13 problems, paralyzing the Board on vital decisions. And  
14 it's caused consternation for some Board members.

15 It's not fair to the people of California that  
16 this Board runs for months without all seven members. I  
17 feel sorry for you. I think you need those other two  
18 members.

19 Now, the Bee wrote in the Wednesday editorial,  
20 quote, "Schwarzenegger to his credit says he supports the  
21 shared liability concept in AB 70," closed quotes. I  
22 really don't believe that. If he lets the most important  
23 board involved in the flood process languish with only  
24 five members for all this time, that's an injustice to you  
25 as a board.



1           Now, I think you might say I'm a little harsh  
2 today. It's because there are thousands of lives at stake  
3 and millions of dollars.

4           The Bee said in the editorial, "If the  
5 legislators in both chambers can work with him on final  
6 product, 207 could be a historic year for smart flood  
7 planning." I'm not counting on that, because there's  
8 millions, maybe even billions of builder dollars at stake,  
9 and those people are not going to give up very easily.

10          Now, the distinguished educator, UC Davis  
11 Professor Jeffrey Mount, who used to sit up there on that  
12 podium, said it about as well as anyone could when he  
13 spoke to the Yuba County Supervisors May 22nd, 2004. The  
14 document is there in your packet. And here it is here and  
15 it's on our website.

16          He said, "You've said, 'Come hell or high water,'  
17 literally and figuratively, we're going to build. You're  
18 building a house of cards. If someone pulls one of the  
19 cards out, people are left at risk. I'm willing to bet my  
20 house that \$250 million won't be enough. We have a long  
21 history of these things going way over target of the  
22 original estimates."

23          Not a profit. Just an honest man is Dr. Jeffrey,  
24 who called it like he saw it, and he got sacked for his  
25 efforts.

1           Now, over 2,000 homes have been built in Plumas  
2   Lakes; 12,000 are scheduled there. The bottom has fallen  
3   out of the housing market and these builders want to  
4   renege on their promises. And your chief engineer warned  
5   you about this more than a year and a half ago.

6           And I'm just about to wrap it up now.

7           Yesterday's Bee article had a couple of lines  
8   that support my argument. A good quote from Assemblywoman  
9   Wolk.

10          "Last year several bills in the Legislature tried  
11   to put the brakes on development in high risk flood zones.  
12   They met with stiff opposition from the development  
13   industry and failed to pass, closed quotes." Now, that's  
14   penny-wise and pound-foolish. Because like Lester Snow  
15   said, thousands of lives and billions of dollars are at  
16   risk.

17          Senator Darrell Steinberg here of Sacramento said  
18   it's critical for communities to start including flood  
19   concerns in land-use decisions. I haven't heard a thing  
20   about that so far today. He said it's important for state  
21   leaders to find ways to leverage the \$5 billion in new  
22   bond funds because it could take three times that amount  
23   to make all the improvements needed in the state.

24          Now, over these last three years I've filed many  
25   documents with this Board. All of them are now in the

1 administrative record. And you know what that means. It  
2 can and will be used for any legal case that comes out of  
3 severe flooding. God forbid it that it happens, but you  
4 all know it can happen. You'll have many years of  
5 experience.

6 Now, in light of the testimony of my good friend,  
7 Professor Dr. Robert Villa, who spoke here recently, I put  
8 another document in my packet for you. I hope you'll take  
9 the time to read it, because it clearly will show you that  
10 awesome authority and responsibility is on this Rec Board.

11 That document is called "Risks and Liability:  
12 Who is responsible for avoiding a California 'Katrina,'  
13 and who will pay if we do not?" This is the report of a  
14 joint hearing of the Judiciary Committee; Water, Parks,  
15 and Wildlife Committee; and the Insurance Committee of  
16 California Assembly, October 25th, 2005.

17 The Board has a legal responsibility for  
18 oversight of the entire Central Valley Flood Management  
19 System. Although it presides administratively with the  
20 DWR, still the buck stops right here. And I hope that  
21 I've encouraged you to step up to the plate, take charge.  
22 Remember, it's the law.

23 Your discussions today are the most encouraging  
24 I've had to date. Staff has tried to rescue -- or wrestle  
25 with this whole problem of identification, something I

1 brought up two years ago when I was disturbed by that. I  
2 wish that there were a better and simpler answer, but  
3 there's not. Who will pay if the levees fail?

4 The people who own the levees, the State of  
5 California, in both cases.

6 Thank you.

7 Any questions?

8 PRESIDENT CARTER: Any questions for Dr. Smith?

9 Thank you very much.

10 At this time I'd like to take a ten-minute  
11 recess. And we will go ahead and continue this  
12 discussion.

13 (Thereupon a recess was taken.)

14 PRESIDENT CARTER: Ladies and gentlemen, if you'd  
15 go ahead and take your seats, we'll continue the meeting,  
16 please.

17 We are on our Agenda Item No. 3. And we were in  
18 the process of hearing public comment.

19 During the break, Mr. Sandner from the U.S. Army  
20 Corps of Engineers said that he had a prior commitment. I  
21 wanted to be sure that none of the members of the Board or  
22 the staff or audience -- I want to be sure that we  
23 addressed any questions to him that they may have with  
24 regard to this particular application.

25 As you recall, we do have a request from staff to

1 approve a draft revised letter to the Corps. There have  
2 been some comments with regard to levee raises and the  
3 Corps's position on that.

4 Does board or staff have any questions for Mr.  
5 Sandner at this time?

6 If not, we can tell him that he won't hold up the  
7 show if he leaves.

8 Okay. Mr. Sandner, thank you very much for  
9 coming. Appreciate it.

10 MR. SANDNER: Thank you. Glad to do it.

11 PRESIDENT CARTER: Okay. With that, we will  
12 continue with public comment on Item No. 3.

13 Mr. Foley.

14 MR. FOLEY: Good afternoon, Mr. President and the  
15 Board. I'm Tom Foley, Yuba City. I'm director of a small  
16 nonprofit, Concerned Citizens for Responsible Growth. And  
17 I'd like to speak to the issue of the application.

18 Our little group spoke about this before, and we  
19 believe that the Reclamation Board should -- this board --  
20 state board should take a much more active role in this.  
21 And I'd like to get a few comments on that.

22 The history of these levees that we are  
23 discussing today is that there's tax report I believe and  
24 a grant report that The Reclamation Board has formed. But  
25 the important issue is that there was a series of floods

1 and it was recognized by the State of California, by the  
2 federal government that the Central Valley could not be  
3 developed without a state Central Valley-wide system of  
4 flood control. This is a system of flood control, and  
5 does not work except as a system. The Central valley  
6 could not have been developed if -- except that a  
7 system-wide -- Central Valley-wide system of flood control  
8 was developed.

9           The Army Corps stepped in. It was the first  
10 federal project outside the Mississippi Valley. It was  
11 called the Sacramento River Plan Project of Flood Control.  
12 That project, the project levees comprised I believe 980  
13 miles of levees, bypasses, weirs. That project -- federal  
14 project and its components was turned over to the State of  
15 California in 1953 with the Reclamation Board under the  
16 supervision -- of supervision. So speaking, that's the  
17 history of these levees, that RD 784 levees are -- they  
18 owned -- formerly federal project turned over to the  
19 states. They own levees.

20           With that little bit of history, Paterno held  
21 that the state as owner of the levee deferred repairs to  
22 the Linda levees. They enjoyed those savings -- the state  
23 as owners enjoyed the savings. And when one reach of that  
24 system failed at the Linda levee, the state must pay  
25 because the state enjoyed over the years the savings. And

1 Peter Paterno, et al., could not be burdened with  
2 unreasonable costs when this -- it was a system. That is  
3 the Paterno decision, it is a system. So when one  
4 component of the state-owned system failed because of  
5 deferred repairs by the State of California, the state had  
6 to pay. RD 784 was excused of it by the Paterno.

7 Now, I believe DWR appealed that to the Supreme  
8 Court. So the Paterno hold -- Paterno -- since Paterno  
9 the State of California state agencies are operating under  
10 a court decision. The Paterno decision is the new law of  
11 the land. And any deferred repairs by the state, any  
12 failures since the date of Paterno -- DWR is aware of it.  
13 DWR isn't operating as though they want Paterno. They are  
14 operating under disbelief.

15 Any failures that the system cannot convey design  
16 flows will be a state -- will be Paterno instantly, that  
17 Paterno established. These are project levees; 980 miles  
18 of weirs, bypasses. These are not RD -- these are not --  
19 Yuba County has no obligation on them. This is state plan  
20 of flood control turned over to the federal government.

21 So when the state plays games, DWR or Rec Board,  
22 I shouldn't say that. But when the state does not make  
23 that clear or is not -- is not well understood when  
24 they -- when these local agencies are -- they're bringing  
25 certain things up there and it delays these repairs, and

1 something breaks in the meantime, the state owns those  
2 levees. The state -- there is no ownership of Yuba  
3 County. There's no ownership of RD 784.

4 So I just wanted to make the Board become --  
5 understand that, be aware. I did not before. I did not  
6 understand this till I read Paterno over again. And I  
7 don't think DWR has accepted it. And I don't think you  
8 should -- you should be very careful about following DWR's  
9 lead on this.

10 Whatever happens since Paterno, it's the new law  
11 of the land. If anything fails, any section of levees  
12 fail to the project levees, the state is liable.

13 Thank you.

14 PRESIDENT CARTER: Thank you.

15 Mr. Eres, would you like to address the Board?

16 MR. ERES: Good afternoon, Mr. President, members  
17 of the Board. Thank you the opportunity to address you.  
18 I'm representing Hofman Ranch. I had not anticipated the  
19 direction some of the presentations were going to go, so  
20 I'm going to address in two different segments here, the  
21 comments I want to make. And what I'm referring to here  
22 was the rather remarkable conversation dealing with the  
23 Joint Power Authority, Three Rivers, and whether or not it  
24 has an obligation to indemnify and whether or not they're  
25 being treated in some, call it, lack of equal protection.



1           I would remind the Board that when references are  
2 made to a particular transcript, in this case it was  
3 February of 2005, that's out of context. You need to take  
4 a look at a series of transcripts, of a series of meetings  
5 to give you a full flavor of what the opportunities,  
6 constraints, and issues were during that time.

7           Clearly one of the concerns, and I think that  
8 your legal counsel has addressed it, is Three Rivers is a  
9 paper shell. Nobody can get up here and tell you anything  
10 different than that. It is a political document. It is a  
11 political contract. It can disappear tomorrow. As Board  
12 Member Lady Bug Doherty asked the question, and she's  
13 asked it a number of times, how long can we be guaranteed,  
14 as like in a statute, that Three Rivers will exist as a  
15 joint power authority? And the reason that nobody's  
16 giving you an answer is they don't know, it could  
17 disappear tomorrow.

18           The idea that somehow the county was drawn into  
19 the Joint Power Authority, I really think it would be well  
20 worth your while to get a little of the history there.  
21 The Joint Power Authority really initially intended to  
22 have a third member, Yuba County Water Agency. In fact,  
23 it was identified in those initial documents and then  
24 dropped out.

25           It's also interesting, if you read the document,

1 it seems to talk about jurisdiction larger than RD 784.  
2 However, it didn't include the other obvious RDs that are  
3 there, 2103 being one of them; 813 I think is the other  
4 one.

5           So basically the bottom line is that your  
6 concerns and your predecessor board concerns for financial  
7 responsibility were very well taken. It was negotiated.  
8 That's the infamous Condition 13. The idea that somehow  
9 there can be assessments if there's liability -- and I  
10 would suggest to you it's a little bit of a red herring.  
11 And the reason for that is sort of blithely it's referred  
12 to as a 218 election. Well, I think Board Member Hodgkins  
13 can give you a real tutorial on 218 elections and how easy  
14 they are to accomplish, and getting the required number of  
15 votes is just not a problem.

16           The idea of getting a 218 election passed in Yuba  
17 County right now I think is indicative of their current  
18 efforts to try to conduct surveys in order to find out how  
19 to do assessments for operation and maintenance. And that  
20 whole process is, to say the least, stalled. The idea of  
21 getting a 218 election at this stage of the game I think  
22 is -- I'll say it's remote, but that's my personal view.  
23 And the idea is, assess who? Who are those that would be  
24 benefited, that would fall under the jurisdiction of a  
25 joint power authority for purposes of levying an

1 assessment? What's the nexus. What's the benefit?

2 Those are very significant issues and they can't  
3 be just simply marginalized by saying, "Well, yes, we have  
4 the authority to have assessments. We'll just do a 218  
5 election." Somewhere a snowball in Needles during July  
6 would have a better chance of making it across the street,  
7 I would suggest.

8 So, again, let's remember the context of --  
9 Paterno has been referred to, Katrina, public safety; and  
10 then there's also involving law here in terms of  
11 condemnation, inverse condemnation. There's a of issues  
12 here that go directly as to who's going to be responsible  
13 for what acts.

14 Clearly it is a policy issue. Yes, and indeed it  
15 is being addressed one way or the other in the  
16 Legislature, at least over the last few years.

17 So the idea that you have kept Three Rivers' feet  
18 to the fire because it is a shell, and you've already  
19 identified that RD 784 has two lawn mowers and a tractor,  
20 and so the next thing you can look at is the only other  
21 principal behind the shell and that's the county. And  
22 whether or not the county can respond or not and whether  
23 or not the taxpayers in the county understand that  
24 potential exposure, is a delightful discussion for a later  
25 day.

1           The second part of my concerns had to do really  
2 with the application that you have before you more  
3 directly. You've heard me say this before. I think by  
4 moving or trying to move on this application today is  
5 premature. They seem to think that somehow in the  
6 applicant's mind that you can take and bifurcate this  
7 project and somehow say, "We're going to look at segment 1  
8 and then we're going to jump over and look at segment 3,  
9 and we're going to avoid segment 2 because that's the 900  
10 pound gorilla in the room nobody wants to address at this  
11 time."

12           Well, I'm sorry. It should be addressed at this  
13 time. Otherwise what you have here is piecemeal. And if  
14 you take a look at the way the project fits, you have  
15 other things going on here in terms of: What's going on  
16 with Wheatland in the Bear River levee, what's going on  
17 with Sutter and what they want to do with the levee, and  
18 what are the other implications that may be downstream  
19 with respect to Natomas and their cross canal? System,  
20 system, system, system. And it needs to be looked at as a  
21 system.

22           And the concern that was expressed I think by a  
23 Board member earlier, "Well, let's not confuse this permit  
24 with the broader policies," with all due respect, you  
25 exactly have to do that. That's your jurisdiction, that's

1 your purview, that's your statutory responsibility. If  
2 you don't, you're ad hoc making policy by taking  
3 applications and permits up one at a time without ever  
4 looking at what the end result is going to be.

5           There's an old passage I may have mentioned to  
6 you in Alice in Wonderland: If you don't know where  
7 you're going, any road will get you there. And at the end  
8 of the day you should have a policy locked in and you  
9 should be theming everything that comes before you to that  
10 policy. It is inappropriate not to do that.

11           I would suggest to you that your staff report and  
12 Dan Fua really set the stage for what has been the  
13 concerns of my client and as I have been expressing them  
14 to you in page 4 of that staff report. And he listed them  
15 quite dramatically, and I will restate them for you for  
16 emphasis.

17           History in this area is of failures. But we have  
18 uncertainties in subsurface and forming a formulation of  
19 materials used in select and design seepage control  
20 measures, uncertainty in the performance and effectiveness  
21 of seepage control measures, changing core criteria,  
22 impacts of global warming, impacts of new state plan of  
23 flood control. I would suggest to the Board that those  
24 are exactly the environmental components that you're in  
25 today as you're taking a look at this application that is

1 before you today. And, again, if you needed to have any  
2 assurance the fact that it's premature to even look at  
3 this application today, at a minimum it ought to be looked  
4 at when you have segment 2 in front of you. It's  
5 inappropriate not to do that.

6 Now, I would also indicate to you that you're  
7 going to be asked to make some environmental findings.  
8 I've indicated to you that I feel that Three Rivers made  
9 an error in not trying to early-on link up its  
10 environmental considerations under CEQA with Corps of  
11 Engineers federal responsibilities under NEPA. They know  
12 that's been our position, continues to be our position.  
13 And if you take a look at page 18 of their report that  
14 they have presented to you -- and I think it's a report as  
15 of April 30th, 2007 -- it identifies documentation  
16 compliance with CEQA.

17 But if you take a look at it, and I find it a  
18 little bit disconcerting, because in a sense what they're  
19 saying here is that, "Well, there is a NEPA component to  
20 this thing here. And you can actually handle that by  
21 taking a look at a final environmental impact statement,  
22 an EIR back in April of 1998." Well, that's magical.  
23 That's old. That's before Paterno. That's before  
24 Katrina. That's before some of the policy issues that you  
25 have before you today. And as I urged them to try to

1 combine those environmental requirements of both the  
2 federal and the states, you heard it, "Well, we don't have  
3 to do that. We'll wait until we have a permit before" --  
4 "the application before the Corps of Engineers. And then  
5 we'll take care of the NEPA side of it at that stage of  
6 the game." You're not going to be able to do that.  
7 You're the big picture people. You are the people that  
8 have the responsibility for policy.

9           So this is the opportunity to take in context  
10 what is being presented to you in this application today  
11 and say, "Time out, time out. We're going to look at this  
12 as a system. We're going to look at all the segments of  
13 it. And we're going to take a look at it in terms of what  
14 is in the best interests of the people of California  
15 you've got for public safety." That's what your  
16 responsibility is.

17           Now, for purposes of trying to get a sense of,  
18 well, what is project -- what is this project that is  
19 referred to today? I would just simply have you take a  
20 look at the CEQA guidelines; 15378 defines "project" as  
21 the whole entity that is being created, not little  
22 segments. So, again, from the environmental point, just  
23 on the environmental point, there's a context here that's  
24 missing: One, the entire project, all three segments, in  
25 that context; in the broader context you have other

1 projects that are working their way up to you; and the  
2 broader context of that, you've got the whole Corps of  
3 Engineers, NEPA responsibility, which I would suggest to  
4 you should not be taken lightly.

5           There's also been a reference to what is the real  
6 concern here? Seepage, seepage, seepage. If you take a  
7 look at your staff report, it identifies seepage on the  
8 landward side of the levee 300 feet and refers to that in  
9 a couple of paragraphs, 300 feet landward side going  
10 inside. And that's not necessarily a limit.

11           So the issues that we've had all along with  
12 respect to that if you have these uncertainties that the  
13 staff report identifies, and you're taking a look at a  
14 piecemeal approach at trying to put these levees in place  
15 at this stage of the game for Three Rivers, again I would  
16 suggest that's piecemeal.

17           I would also suggest that references were made to  
18 the 1957 profile. And that just keeps coming back as some  
19 sort of a baseline. Well, my goodness, 1957, I think that  
20 was before 1987, 1997 and before a whole heck of a lot of  
21 not only flood events that we've had, major policy shifts  
22 and law that we've had. I requested from Colonel Light in  
23 a letter for him, if he would, to address the issue with  
24 respect to that 1957 profile and whether it's even  
25 relevant in California anymore post-Katrina.



1           You have a copy of a letter I received yesterday  
2 from him. I wanted to make sure that you were copied in  
3 as well as Three Rivers. And he has an interesting  
4 paragraph I'd like to read to you. It says, "In response  
5 to your last question, the 1957 profile is the authorized  
6 design for the Sacramento River Flood Control Project.  
7 The Sacramento and San Joaquin River basin's comprehensive  
8 study was completed in 2002. This study included analysis  
9 of the 1957 design profile on the Sacramento River Flood  
10 Control Project.

11           "The Corps has been unable to identify a  
12 non-federal sponsor to participate in a system-wide  
13 project that may change the 1957 design profile. Any new  
14 project would require Congressional authorization."

15           My goodness, shouldn't there be a non-federal  
16 sponsor in the State of California linking up with the  
17 Corps of Engineers to review the 1957 profile to determine  
18 whether or not that doggone thing is even relevant  
19 anymore? I suggest to you that that's exactly what ought  
20 to be done.

21           There was also some comments made -- and I'll  
22 conclude -- and the idea, well, why would you ever think  
23 of lowering a levee? Well, let me suggest why you might  
24 consider lowering a levee. Because the levees may have  
25 been granted to the state or the district -- the

1 Sacramento/San Joaquin Levee District by easement, and the  
2 easement is a document that is recorded in the county  
3 recorder's office and is a legal document that describes  
4 the opportunities and constraints with respect to that  
5 easement and may well set the burdens in that easement as  
6 to what can be legally constructed within that easement.

7           And if that has been exceeded over time, there  
8 may be now an overburdening that has occurred with respect  
9 to the holder of that easement and the underlying owner of  
10 the property, if you will, the burdened property. So  
11 there may be issues lurking out there with respect to that  
12 issue of levee height.

13           But, again, if I may conclude, this project -- or  
14 this application today, mind you, really needs to be put  
15 back in context, if you would. I don't think it's  
16 appropriate for you to act on it today. And you have  
17 heard in the last couple of hours a number of issues that  
18 seem to be catching us all by a little surprise.

19           It doesn't hurt to take a pause here and to do it  
20 right. You're only going to have one chance at this.

21           Thank you very much.

22           SECRETARY DOHERTY: Mr. Eres?

23           MR. ERES: Yes, ma'am.

24           SECRETARY DOHERTY: You said we had a copy of a  
25 letter. Am I missing it somewhere?

1           MR. ERES:  It's not in your packet.  I was  
2   indicating that the Corps -- that Colonel Light sent me a  
3   letter.  I got it yesterday.  And It shows on the bottom  
4   of it that it had been copied to Three Rivers.  You may  
5   not have received it in your mail yet.  I assume it will  
6   be distributed in the ordinary course of your internal  
7   distribution.

8           GENERAL MANAGER PUNIA:  We haven't received it.  
9   But we'll receive -- and we'll share it with the Board  
10  members.

11          SECRETARY DOHERTY:  That's okay.  I just thought  
12  maybe I had a pile of papers here --

13          MR. ERES:  I again had requested that it been  
14  distributed to you.

15          Thank you.

16          PRESIDENT CARTER:  Thank you.

17          Mr. Margo, did you want -- is Mr. Margo still  
18  here or --

19          MR. SHAPIRO:  No, he had to leave for a previous  
20  obligation.

21          PRESIDENT CARTER:  Okay.  Very good.  I had a  
22  card.  I assume he spoke on what he wanted during his --  
23  okay.

24          Those are all the public comment cards I have for  
25  this particular item on the agenda.

1           So we have a staff recommendation before us at  
2 this point, ladies and gentlemen, again to request the  
3 Board make findings on the environmental issues, approve  
4 the draft revised letter to the U.S. Army Corps of  
5 Engineers to request that the cooperative agreement be  
6 approved by the Board, to approve the 50-foot easement for  
7 segment 1 of the project, and, finally, to approve the  
8 permit.

9           What's the Board's pleasure at this point?

10          Any discussion?

11          VICE-PRESIDENT HODGKINS: You know me.

12          SECRETARY DOHERTY: Yes.

13          VICE-PRESIDENT HODGKINS: Here's what I think. I  
14 thought the testimony we got was great. I thought the  
15 staff report was well done. I have a question here.

16          The way the indemnity provision is written in the  
17 report -- I mean in the permit, it would rope -- or it  
18 might -- it depends on how you guys interpret it -- rope  
19 Yuba County into the responsibility for maintenance of  
20 these levees.

21          Now, quite frankly, having lived with the local  
22 government and knowing how much trouble they have raising  
23 money, I really think that in the event that this can't be  
24 maintained by TRLIA and the 784, the best thing to do is  
25 to form a maintenance district, because we're not subject

1 with the maintenance districts to 218 and so appropriate  
2 money can be raised from the beneficiaries to maintain the  
3 levees appropriately.

4           So my question for staff is, is the intent here  
5 to make Yuba County also responsible for funding  
6 maintenance in the way you've written this?

7           STAFF COUNSEL FINCH: No, it's not. And also, if  
8 it comes to that point, there's a different mechanism that  
9 could be used.

10           VICE-PRESIDENT HODGKINS: Okay. So that's not an  
11 issue that we have to deal with.

12           MR. SHAPIRO: With respect to it's in the  
13 cooperation agreement explicitly and says, "The local  
14 sponsors" -- which includes the county -- "shall be  
15 jointly and severally liable to reimburse the Board or the  
16 government for the reasonable cost of performing  
17 maintenance." So while I agree that may not have been the  
18 intent, if the Board agrees with that intent, that last  
19 sentence of section 3B should be stricken.

20           VICE-PRESIDENT HODGKINS: I simply don't think it  
21 makes any sense from the standpoint of getting the  
22 maintenance done to make Yuba County responsible for it.  
23 I mean you heard what their budget is. And we can form a  
24 maintenance district and in effect, other than for the  
25 heat of the assessment, they can assess for whatever the

1 cost is to maintain to dam the levees. And so leave the  
2 county out of it.

3 STAFF COUNSEL FINCH: Well, what sections were  
4 you referring to, Scott?

5 SUPERVISING ENGINEER FUA: 3B.

6 MR. SHAPIRO: 3B, last sentence of the  
7 cooperation agreement in Attachment C. The whole B says,  
8 "If a district has failed or refused to perform the  
9 obligations set forth in the section" -- which was O&M --  
10 in the opinion of the government or the Board that  
11 constitutes a threat to the ability of the end of the  
12 project, then the Board or government performs the work.  
13 And the local sponsor shall be jointly and severally  
14 reliable to reimburse the Board or government for  
15 reasonable costs of performing that work.

16 And I agree with you, Butch, that the cheapest  
17 mechanism for the Board is a maintenance area as opposed  
18 to suing the county to have them impose something through  
19 a 218 election.

20 VICE-PRESIDENT HODGKINS: I mean it sort of gets  
21 to practicality here. The best way to get the maintenance  
22 done if 784 falls on its face is form a maintenance  
23 district. And leave the county out of it.

24 And so what I heard -- and I could at least read  
25 the condition in the permit that the county might not be

1 part of the maintenance. But what you're saying is in the  
2 cooperative it's very specific. Okay, I think that should  
3 be stricken.

4           Now, here's the important thing I think for the  
5 Board members to understand about the indemnification, is  
6 if we include this indemnification here, we need to  
7 recognize -- this Board needs to recognize that that  
8 really is saying it's our intent to connect the land-use  
9 agencies -- and that's at least the way I would say it,  
10 because I think that's the real policy issues here --  
11 connecting the land-use agency, their land-use planning  
12 power and the liability for damage to development that  
13 goes in and behind levees whereas somebody -- and none of  
14 us they could take and really hold.

15           Now, I personally think that's a good policy.  
16 Okay? Although I will tell you that I also would be  
17 willing, if the Legislature approves any kind of law that  
18 does that, to back away from that. Because I think as  
19 long as local governments have to think about liability,  
20 whether it's on future development or, in this particular  
21 case, development that's already taken place, then the  
22 policy objective that I'm concerned about, which is not  
23 separating land-use planning from the liability associated  
24 with the damages from flooding, has been addressed.

25           So, I am prepared, although I don't have the

1 exact wording, to move this item with the understanding  
2 that we're not going to make Yuba County responsible for  
3 maintenance costs, but that we are going to include them  
4 in the indemnification. And that it's the intent of the  
5 Board when SAFCA comes back in front of us to do the same  
6 thing to SAFCA. Because despite things that Nancy said,  
7 everything you heard about TRLIA is true about SAFCA. It  
8 could be gone tomorrow.

9           It cannot assess other than through 218, which  
10 means you have to have the voters approve it. The same  
11 thing is true of the reclamation districts. I mean there  
12 have been many in the valley that have just gone. And  
13 that's why we have maintenance districts. So nothing is  
14 permanent forever. And there is no difference. And I  
15 promise you -- this is a vow -- if you think Yuba County's  
16 upset, remember, they already agreed to this once. Okay.  
17 So they have sort of swallowed it. And it's not going to  
18 make a whole lot of difference whether they agree to it a  
19 second time, other than from a principle standpoint.

20           But I think it's important that we recognize that  
21 if we do this to them again, we're saying we're going to  
22 do it to everybody, I'm prepared to do our best to do  
23 that. And I think it makes sense until the Legislature  
24 adopts a law that puts the -- part of the burden of the  
25 liability here on the counties and the cities, all



1 land-use agencies, so that they have to think about it.

2 At that point I'd be prepared to revisit that policy.

3           So that's kind of where I am. I don't want to  
4 make a motion though. I think the most important thing  
5 here is to get this permit approved. But despite what Mr.  
6 Eres said, and my general agreement that it would be nice  
7 to be able to deal with the whole system as a system, the  
8 simple fact of the matter is that there is no way to do  
9 that from a practical standpoint. This is improvements  
10 that need to be made, and our job should be to get the  
11 permit out of here so they can go about doing the work, in  
12 my opinion

13           BOARD MEMBER BURROUGHS: Butch, why do you say  
14 that it's impractical to look at this project as a whole  
15 system?

16           VICE-PRESIDENT HODGKINS: Because the state and  
17 the Corps together spent \$35 million on the comprehensive  
18 study trying to come up with a plan for the whole system  
19 and it went nowhere. Okay? It is an issue that is  
20 impossible politically to address in this state. We don't  
21 have the staff, DWR doesn't have the staff. And the time  
22 required to develop a new state plan of flood control  
23 would mean basically we're going to leave every urban area  
24 that's ready to go forward and make improvements sitting  
25 with levees that don't provide 100-year flood protection

1 for, I would guess, at the minimum seven years, if ever.

2 I appreciate that that's the way things should  
3 work. But unfortunately in the State of California things  
4 just don't work that way. There are too many interests  
5 that that -- are best served especially if you stop any  
6 improvements to this system until we have a plan. Then  
7 you empower anybody who doesn't want to see more  
8 development in the valley to stop that process and -- or  
9 whatever their interest is. And unfortunately we're not  
10 able to -- we don't have the leadership or the will  
11 politically as a whole to overcome that. And this Board  
12 could absolutely make that commitment and it won't make a  
13 damn bit of difference at the end.

14 I'm sorry, that's the political reality of  
15 California government.

16 So, you know, I say stake out our position, which  
17 you ought to be connecting land-use planning authority and  
18 liability and get this permit out so that the work can be  
19 done. That's where I come from. But if that's not  
20 acceptable to three of the members, then I'm prepared to  
21 entertain whatever it takes to get this permit out so the  
22 work can get done.

23 PRESIDENT CARTER: Further discussion?

24 SECRETARY DOHERTY: One of the things that  
25 bothers me about the project is that across the river

1 there are problems and they want to make modifications to  
2 the levee. Now, this is all so close together. What I am  
3 curious to know is, why didn't Yuba County go across the  
4 river to Sutter County and say, "Hey, you've got some  
5 problems over there and we've got some problems here. Why  
6 don't we work together and solve this?" Because what's  
7 happening on your side is going to affect their side.

8 PRESIDENT CARTER: Do we want an explanation?

9 SECRETARY DOHERTY: Well, Scott can maybe tell  
10 me.

11 MR. SHAPIRO: I thought it was a question. But  
12 if it was rhetorical, I'd be happy to sit down.

13 PRESIDENT CARTER: We'll take a brief  
14 explanation.

15 MR. SHAPIRO: Okay.

16 SECRETARY DOHERTY: We've gotten a couple of  
17 explanations.

18 MR. SHAPIRO: We -- really picking up on Butch's  
19 comments, we don't have a lot of success stories -- I  
20 can't really think of any -- of cross-river successes.  
21 Actually we forged a bit of the success with Sutter  
22 County. If you look at the Feather River, you have three  
23 segments, as you know.

24 Segments 1 and 3 that were before you today, the  
25 channel is adequately wide there. And that's why there

1 doesn't seem to be relevance to going across the river to  
2 Sutter and asking for help or vice versa.

3           However, segment 2 is not adequately wide. We'll  
4 refund this afternoon. There'll be a public comment on it  
5 that will be here as well. That area we did need to do a  
6 setback. Sutter supports our setback. They've written a  
7 support letter. They have a setback at Star Bend  
8 proposed. We support theirs. We've written a support  
9 letter.

10           So our efforts are being coordinated. It's just  
11 that there's no reason for a setback or significant  
12 changes in segments 1 and 3 because the channel adequately  
13 wide.

14           PRESIDENT CARTER: That's the explanation to your  
15 rhetorical question.

16           (Laughter.)

17           PRESIDENT CARTER: Any further discussion,  
18 Comments?

19           BOARD MEMBER RIE: I have a question for staff,  
20 for Steve Bradley or Dan Fua.

21           I believe it was condition 64 that said comply  
22 with all the requirements of the Corps except for Item C,  
23 the Corps letter.

24           Should we change that or are we going to leave  
25 that as it is?

1 CHIEF ENGINEER BRADLEY: I don't think we should  
2 change that.

3 PRESIDENT CARTER: What does Condition C refer to  
4 in the Corps's letter?

5 CHIEF ENGINEER BRADLEY: It said that they would  
6 leave it at -- basically leave it at the elevation that it  
7 is. You could have a locally say an emerging flood fight  
8 repair that they didn't come back and remove rock that  
9 they placed or a road or some such like that, that's  
10 locally high.

11 C: That after the installation of slurry wall,  
12 the levee should be reconstructed to at least the Corps's  
13 design profile or the height before construction,  
14 whichever is higher.

15 If the height before construction had an anomaly  
16 there, I don't think we should raise it. In fact, I think  
17 this Board should not consider something that could be  
18 considered a nonauthorized raise. I don't think you want  
19 to inadvertently approve raising a levee that there was no  
20 authorization.

21 BOARD MEMBER RIE: Was it reasonable to suspect  
22 that the '57 profile that we have on file could be  
23 inaccurate?

24 CHIEF ENGINEER BRADLEY: That is what was turned  
25 over to us as the project, with the proviso -- provision

1 that there was some improvements to be made later in that  
2 turnover.

3 BOARD MEMBER RIE: Well, let's say we had a  
4 difference in elevation of six inches. Could it be  
5 possible that the existing heights of the levee is at the  
6 1957 profile and surveying techniques were not as  
7 sophisticated as they are today and the as-builts are  
8 wrong?

9 CHIEF ENGINEER BRADLEY: Well, they -- surveying  
10 the surveying, we have digital measuring now rather than  
11 physical measuring with a tape. But they constructed all  
12 the infrastructure in this country with historic  
13 surveying. In fact, they laid out their tunnel through  
14 the Sierra and came right on. So I think the surveying is  
15 just as accurate back then as it is today.

16 But I don't think that's a question.

17 The question of whether it's six inches, that  
18 probably would be debatable because you could -- you're  
19 going to have to interpolate this a little bit off the  
20 design -- or the profiles, and they aren't really that  
21 close.

22 I'm more worried about where you -- when they run  
23 a profile prior to doing the project, if it shows an  
24 anomaly, that is, a hump in the system, then something's  
25 wrong. And I don't think this is a big problem. I think

1 we can work through this. What we want to end up --  
2 really end up with is a fairly level profile for this  
3 entire reach. And I don't want to see an anomaly  
4 somewhere because there was a pile of rock that got left  
5 during a flood fight, or a farmer dumped a bunch of stuff  
6 on the levee and it just happened to be a little hump. I  
7 think that this is not a problem. I think we can -- if  
8 they show us the profiles, I think we can work through  
9 anything there is. I don't think it's a problem.

10 BOARD MEMBER RIE: Okay. I --

11 CHIEF ENGINEER BRADLEY: But I don't think you  
12 want to just be locked into leaving it just because it was  
13 there.

14 BOARD MEMBER RIE: I'm just concerned that if the  
15 Corps told us in their letter either the '57 profile or  
16 the existing height, whatever's higher, and we're opening  
17 the door to possibly lowering the levee.

18 CHIEF ENGINEER BRADLEY: Well, if it's an  
19 unauthorized raising, are you going to authorize that? It  
20 is not -- if it's not any kind of authorized raise, just  
21 because there was a pile of dirt there, you're going to  
22 authorize raising that? I don't think this is an issue.

23 BOARD MEMBER RIE: Okay.

24 PRESIDENT CARTER: So just so I understand how  
25 this would be handled during reconstruction of the levee

1 and prior to work.

2 I'm familiar with levees where they have riprap  
3 piled on a wide section of the levee. Is that considered  
4 a raising of the levee? And would that be the profile  
5 that would be surveyed and then restored if we followed  
6 the Corps's guidelines or -- I mean there's -- it seems to  
7 me that we ought to apply a little bit of common sense to  
8 the process.

9 CHIEF ENGINEER BRADLEY: That's exactly what I'm  
10 saying. I think that's what it comes down to. You don't  
11 want your levee profiled to look up and down as you go  
12 along it, through entire reach. It should be a fairly  
13 level even profile.

14 PRESIDENT CARTER: And perhaps maybe after  
15 they're done with the levee repairs it makes sense to  
16 leave that pile of rock that was there and maybe they  
17 don't have to disturb it. I don't know. But for --

18 CHIEF ENGINEER BRADLEY: Well, they're going to  
19 be --

20 PRESIDENT CARTER: But for flood-fighting  
21 purposes these stockpiles are strategically placed around.

22 CHIEF ENGINEER BRADLEY: They are degrading the  
23 levee. What we're saying is they're not going to be  
24 raising them back up if there was some anomaly there; that  
25 it should be a nice even profile along this stretch.



1           PRESIDENT CARTER:   Okay.

2           CHIEF ENGINEER BRADLEY:   A pile of rock that  
3   should not be surveyed as a levee profile.

4           PRESIDENT CARTER:   And I don't think that the  
5   Corps thinks that the existing condition is probably  
6   indicated by a pile of rock or a pile of dirt that's piled  
7   off on the crown somewhere.

8           CHIEF ENGINEER BRADLEY:   Yeah, it depends on what  
9   they survey as the levee crown.  If they're going up -- if  
10   there's an obvious pile of riprap there, you wouldn't want  
11   to survey that as your levee crown.  But you do get  
12   material placed for flood fighting to build up a road, you  
13   know, build up the crown sometimes for heavy equipment.  
14   They pile on a bunch of gravel.  They're supposed to come  
15   back after -- you know, at the end of the flood fight when  
16   they do the rehab and level that back out.  Sometimes that  
17   does not get taken care of.

18          PRESIDENT CARTER:   Okay.  Mr. Punia.

19          GENERAL MANAGER PUNIA:   I want to make it clear  
20   in Condition 2.  So this condition that we -- the way we  
21   negotiated, if they're going to degrade the levee, only  
22   then we are asking them to restore to these conditions.  
23   If they're not touching most of the -- the major portion  
24   of the section where they will be putting seepage well on  
25   the landside berms, in that area we are not asking them to

1 lower it even if -- but where they're going to degrade it,  
2 then -- to put the slurry wall, and then these conditions  
3 will apply when they're restoring the height.

4 PRESIDENT CARTER: Okay. Thank you.

5 Any more discussions?

6 SECRETARY DOHERTY: I want Butch one more time to  
7 explain. You don't want Yuba County to be held  
8 responsible or to be the maintaining district?

9 VICE-PRESIDENT HODGKINS: That's correct. The  
10 way in my opinion to maintain levees when the local agency  
11 fails is to form a maintenance district, because the  
12 maintenance district doesn't have to get voter approval to  
13 assess people the cost of maintenance. Everybody else has  
14 to. And I don't know how you maintain something if you  
15 can't get money from the voters to do it. And --

16 SECRETARY DOHERTY: So when will they create this  
17 agency?

18 VICE-PRESIDENT HODGKINS: Well, they wouldn't do  
19 that -- it simply would be that the signatories for  
20 maintenance in the long term would I assume be TRLIA and  
21 784. And in the event that the inspections or TRLIA and  
22 784 aren't doing an adequate job, the state could form a  
23 maintenance area.

24 PRESIDENT CARTER: It's similar to what we  
25 embarked upon in Knights Landing. But it turns out

1 Knights Landing ridge cut took it over. But essentially  
2 the state would take over responsibility for --

3 SECRETARY DOHERTY: That was a little tiny levee.

4 PRESIDENT CARTER: Yes.

5 SECRETARY DOHERTY: This a great big one.

6 PRESIDENT CARTER: Okay. Any further discussion  
7 or comment?

8 MR. FOLEY: May I speak out of turn since Mr.  
9 Shapiro has?

10 PRESIDENT CARTER: Just -- yes, but in a moment.

11 MR. FOLEY: Okay.

12 BOARD MEMBER BURROUGHS: I have a couple  
13 comments.

14 I absolutely feel that we go with the  
15 recommendations of the staff to hold the county  
16 accountable and connect the land-use planning and the  
17 liability. I don't think we need to go to the Legislature  
18 to pass legislation that leads the way on that.

19 In the interests of holding public safety at the  
20 highest level, I want to see a project -- this project  
21 presented to us in its entirety as a system, as was  
22 mentioned earlier, looking at the whole picture. It's  
23 very difficult to have a piecemeal application process.  
24 And I don't know exactly how we can stop midway and ask  
25 for that. I'm not interested in holding projects back. I

1 am interested in making -- ensuring that public safety is  
2 held in the highest regard as we continue.

3 I'm very uncomfortable with the fact that county  
4 came with Mr. Margo and his comment saying that he went  
5 along with indemnification in the beginning but now wants  
6 to back out. This project needs to be held accountable in  
7 its entirety, but by all the people that have presented it  
8 to us. So I'm not interested, Butch, in letting anyone  
9 off the hook as far as liability.

10 VICE-PRESIDENT HODGKINS: Neither am I.

11 STAFF COUNSEL FINCH: Could I make a  
12 clarification at this point?

13 I don't -- for some reason I don't have that --  
14 is it 13B? -- in front of me. But if it separate from the  
15 19, which is the liability -- the condition for liability,  
16 and 13B is about maintenance, I don't think -- you know,  
17 legally there's a problem with going the root of forming a  
18 maintenance area. It's actually more expensive for the  
19 locals, because then they have to pay the state. But I  
20 think that that one -- if I could look at the language, if  
21 there's a copy -- I think that that separation would be  
22 fine. But I would like to look at the language.

23 VICE-PRESIDENT HODGKINS: I'm not saying form  
24 one. Okay? I am simply saying that I -- leave Yuba  
25 County out of the responsibility for raising money for

1 maintenance. They can't do it. Okay? And if we need  
2 more money at some point in time, we would form a  
3 maintenance area.

4 PRESIDENT CARTER: Mr. Punia.

5 GENERAL MANAGER PUNIA: I think Vice President  
6 Hodgkins is absolutely right. In the Water Corps there's  
7 a provision, if the local agency fails to maintain  
8 properly, then state has the right to form a maintenance  
9 area, and Board will be the agency to approve those  
10 maintenance areas.

11 CHIEF ENGINEER BRADLEY: It is DWR's  
12 responsibility though to form the maintenance area.

13 GENERAL MANAGER PUNIA: Yes. Board will approve  
14 the DWR recommendation to approve the maintenance area,  
15 yes

16 PRESIDENT CARTER: So if -- I think there have  
17 been a few questions in terms of -- it sounds like there's  
18 a general consensus on indemnification with regard to the  
19 county. And Butch has proposed a change to the actual  
20 cooperation agreement, Section 3B, last sentence, striking  
21 "The local sponsor shall be jointly and severally liable  
22 to reimburse the Board for the reasonable cost of  
23 performing that work." And that work refers to  
24 obligations to operate, maintain, repair, replace,  
25 rehabilitate. So it's the O&M piece. And that's an

1 alternative if you utilize the other -- the standard  
2 process of forming a maintenance area.

3 So that's kind of what is on the table at this  
4 point. We do not have a motion.

5 Is there further discussion or is there a member  
6 that wishes to make a motion on this action item?

7 MR. FOLEY: Could I still have a chance to speak?

8 PRESIDENT CARTER: Oh, I'm sorry.

9 Yes, please, Mr. Foley.

10 MR. FOLEY: We spoke -- Mr. Eres spoke that we  
11 believe that it should not be piecemeal -- shouldn't be  
12 done piecemeal. Mr. Hodgkins spoke I guess contravening  
13 that, that there is not the political -- he agreed that  
14 maybe it should have been done differently. Maybe it's  
15 not the best -- piecemeal is the best way to do it. If  
16 they're not, the political will at state level -- State of  
17 California to get it done.

18 And I wanted to say if the political will is not  
19 with Mr. Hodgkins, where is it? Or if the political will  
20 to get this done properly is not with the Board, who do we  
21 look to?

22 PRESIDENT CARTER: Thank you.

23 I might add that I -- with regard to that issue,  
24 the approaching this from a system, this is a very, very  
25 complex system. If we were to approach it from a

1 systematic perspective, we would be paralyzed. We would  
2 not be able to -- these projects are so large, so huge,  
3 there's so much data and they are so interrelated, that we  
4 would not be able to make any improvements to the system.  
5 We have to decrease the complexity by segmenting the  
6 system and trying to do improvements to the system. I  
7 mean where do we draw the line what the system is? Does  
8 it include the entire Central Valley? Is it the San  
9 Joaquin? Is it the Sacramento. Do we --

10 MR. FOLEY: May I --

11 PRESIDENT CARTER: We all know what --

12 MR. FOLEY: It's a process --

13 PRESIDENT CARTER: -- what is involved in that.

14 MR. FOLEY: It's a process --

15 PRESIDENT CARTER: Excuse me. I'm talking.

16 Thank you.

17 MR. FOLEY: You are making decisions for the  
18 public.

19 PRESIDENT CARTER: So I agree with Butch that,  
20 although it would be nice, it is I don't think either  
21 technically -- in our life times we would not be able to  
22 solve the problems of the system on a timely basis and  
23 without the system changing again and the rules of the  
24 game changing again. So we have to address these on  
25 project by project, piece by piece and make improvements

1 incrementally, small steps. But continuous improvement is  
2 what's important.

3 So that's my two cents.

4 Do we have any other comments from the Board or  
5 suggested motions?

6 BOARD MEMBER BURROUGHS: I do want to just say  
7 one other comment. I attended the -- can I say that about  
8 the Superior Court hearing?

9 STAFF COUNSEL FINCH: In the court, yes.

10 BOARD MEMBER BURROUGHS: I attended the Superior  
11 Court hearing the Reclamation Board was involved in. And  
12 the Judge made a comment that piecemeal is not the way to  
13 look at these projects, that we need to look at them as a  
14 whole project. And I understand that right now the way  
15 the system has been, it's been very difficult to get  
16 things through. But at least I think the project in its  
17 entirety should be presented so that we look at this  
18 project in its entire form. And there are major issues  
19 with seepage issues and I am hoping that they get  
20 addressed. Because as we have had presentations, we've  
21 been told that they're addressed, and then they've  
22 changed, and then now they're addressed in another form.  
23 And that's what I'm uncomfortable about, is the fact that  
24 things have changed back and forth. And I would feel much  
25 more comfortable if, especially in regards to section 2,



1 which is the big major problem, if we could have a  
2 presentation in looking at this project in its entirety as  
3 how it's going to be coming to us.

4 Thank you.

5 PRESIDENT CARTER: Okay. I'm going to propose  
6 that we take a five-minute recess. And so we'll reconvene  
7 here in five minutes.

8 (Thereupon a recess was taken.)

9 PRESIDENT CARTER: Okay. Ladies and gentlemen,  
10 if you could please take your seats and we'll continue.  
11 Hopefully have some closure to this.

12 We were having Board discussion regarding Item 3  
13 on our agenda. Is there any more discussion or any more  
14 comments with regard to this?

15 If not, the Chair will entertain a motion.

16 Oh, Mr. Punia, did you have some suggestions for  
17 the Corps letter?

18 GENERAL MANAGER PUNIA: Staff has a minor  
19 recommendation to change the letter to the U.S. Army Corps  
20 of Engineers. Jim Sandner of the U.S. Army Corps of  
21 Engineers suggested that we should change the word  
22 "modification" or "modify" to "alter" and "alteration" in  
23 the proposed letter we will be sending to the U.S. Army  
24 Corps of Engineers. There are nine places where we have  
25 used the term "modify" or "modification". The

1 recommendation is to change those words to "alter" or  
2 "alteration".

3 Thank you.

4 PRESIDENT CARTER: So we would appreciate it if  
5 any motion to approve this letter is approved as altered.

6 SECRETARY DOHERTY: Well, now that's an easy one.  
7 I can make a motion to that one.

8 BOARD MEMBER RIE: Are we including approval of  
9 the letter, approval of the permit, and approval of the  
10 cooperation agreement all as one motion or not?

11 PRESIDENT CARTER: We can take them --

12 SECRETARY DOHERTY: I just had a motion to  
13 approve the letter modified. Just that.

14 PRESIDENT CARTER: Did you make a motion?

15 SECRETARY DOHERTY: Yes.

16 PRESIDENT CARTER: Okay. So we have a motion to  
17 approve the draft revised letter to the Army Corps of  
18 Engineers requesting approval -- requesting review of the  
19 proposed alteration project, with the letter to be  
20 approved as altered as suggested by Mr. Punia.

21 Is there a second?

22 BOARD MEMBER RIE: Second.

23 PRESIDENT CARTER: Second.

24 All those in favor indicate by saying aye.

25 (Ayes.)

1           PRESIDENT CARTER:   And opposed?

2           Okay.   The motion carries.

3           BOARD MEMBER RIE:   I'll make a motion to approve  
4 the cooperation agreement minus the requirement that Yuba  
5 County be required to maintain the levees.

6           PRESIDENT CARTER:   So we have a motion to approve  
7 the cooperation agreement with striking the language from  
8 section 3B, last sentence in that paragraph 3B, "Local  
9 sponsors shall jointly and severally be liable to  
10 reimburse the Board or the government for the reasonable  
11 cost of performing that work."   Is that --

12          BOARD MEMBER RIE:   Yes.

13          PRESIDENT CARTER:   Is there a second?

14          VICE-PRESIDENT HODGKINS:   Second.

15          PRESIDENT CARTER:   Okay.   We have a motion and a  
16 second.

17          All those in favor indicate by say aye.

18          (Ayes.)

19          PRESIDENT CARTER:   And opposed?

20          (Aye.)

21          PRESIDENT CARTER:   So the motion carries 4 to 1.

22          All right.   We can do this one by one.

23          VICE-PRESIDENT HODGKINS:   Well, how about I make  
24 a motion that we approve the remaining items in  
25 conformance with the staff recommendation.

1           SECRETARY DOHERTY: Tell we what the main item  
2 is.

3           VICE-PRESIDENT HODGKINS: Well, it's the issuance  
4 of the permit.

5           PRESIDENT CARTER: Here, I can read it.

6           VICE-PRESIDENT HODGKINS: Thank you.

7           PRESIDENT CARTER: So the remaining items before  
8 us per the staff recommendation is to request the Board  
9 make findings that the environmental impacts of this  
10 project within the jurisdiction of the Board have been  
11 mitigated or avoided as a result of the proposed changes,  
12 alterations, and mitigation measures incorporated into the  
13 project; that mitigation measures set forth in Three River  
14 Levee Improvement Authority certified EIR relating to  
15 flood control and public safety are hereby adopted and  
16 Three River Levee Improvement Authority's mitigation  
17 monitoring plan is incorporated by reference. And based  
18 on the evidence presented to the Board, the project will  
19 not result in hydraulic impacts that will have a  
20 significant effect on the environment.

21           The next item remaining is that the Board approve  
22 the 50-foot easement required for segment 1 to provide  
23 adequate room for levee expansion, modification, upgrades,  
24 flood fights, operations and maintenance, and a buffer for  
25 urban encroachment.

1           And, finally, that the Board approve permit No.  
2   18170 for the project and delegate the authority to the  
3   General Manager to finalize and issue the permit.

4           That's your motion.

5           VICE-PRESIDENT HODGKINS:   So moved.

6           BOARD MEMBER RIE:   Second.

7           PRESIDENT CARTER:   We have a motion and a second.

8           Any discussion?

9           SECRETARY DOHERTY:   What is the staff's  
10   recommendation?

11          PRESIDENT CARTER:   That was it.

12          SECRETARY DOHERTY:   That is their  
13   recommendation --

14          PRESIDENT CARTER:   Yes.

15          SECRETARY DOHERTY:   -- as written?

16          BOARD MEMBER RIE:   To approve the permit?

17          PRESIDENT CARTER:   Yes.

18          Okay.   Any further discussion?

19          BOARD MEMBER RIE:   I believe staff had a revision  
20   to Condition 17.

21          SUPERVISING ENGINEER FUA:   Yes, and that's  
22   attached in your packet.

23          BOARD MEMBER RIE:   Okay.

24          PRESIDENT CARTER:   And that was intended to be  
25   included in the motion.

1 VICE-PRESIDENT HODGKINS: Yes, it's the way it  
2 was delivered today.

3 PRESIDENT CARTER: That was read into the record  
4 earlier today. Do we need to read it again?

5 Just for clarification, the revised Condition 17  
6 to the permit is: The maximum levee crown elevations of  
7 the levee reaches where construction activities affect the  
8 levee crown area shall be limited to the maximum crown  
9 elevations shown for the same reaches on the U.S. Army  
10 Corps of Engineers' Sacramento River flood Control  
11 Project, California, Levee and Channel Profiles, dated  
12 March 15th, 1957, or as modified by the Corps of Engineers  
13 and shown on as-built drawings provided to the Reclamation  
14 Board subsequent to March 15th, 1957, or other  
15 documentation of authorized levee improvements acceptable  
16 to the Reclamation Board.

17 That's the revised language for 17.

18 So we a motion and a second to approve the  
19 remaining items, which have been read into the record.

20 Any further discussion?

21 Okay. All those in favor indicate by saying aye.

22 (Ayes.)

23 PRESIDENT CARTER: And opposed?

24 (Aye.)

25 PRESIDENT CARTER: The motion carries 4 to 1.

1           Thank you very much.

2           All right. At this time, the Board is going to  
3 adjourn from open session and move into closed session.  
4 We expect the closed session to last no longer than  
5 hopefully 15 to 20 minutes.

6           And so we would ask that those members of the  
7 audience please excuse themselves. And we will reconvene  
8 into open session no earlier than 10 of 4:00.

9           Thank you very much.

10          (Thereupon the meeting recessed  
11 into closed session.)

12          PRESIDENT CARTER: Ladies and gentlemen, we can  
13 go ahead and continue our discussion.

14          Let the record reflect that the Reclamation Board  
15 did enter into closed session. We had a discussion with  
16 our legal counsel regarding litigation as agendized, and  
17 no decisions were made.

18          We are now coming out into open session. And we  
19 will continue with your agenda.

20          We are on Item 5 of Informational Briefings,  
21 Phase 4 Feather River Levee Repair Project (Segment 2 -  
22 setback levee). This is a briefing in preparation for an  
23 agenda item for our meeting in a week's time. So we have  
24 had a little bit of time to prepare for that.

25          Let me do one administrative item before we begin

1 that item. And, that is, I want to introduce Mark Herold  
2 from DWR. Mark, if you could stand up. Mark has had the  
3 patience to sit through this all afternoon.

4 Mark is the new Chief of the Floodway Protection  
5 Section. He is replacing Mike Mirmazaheri, who many of  
6 you know. Mark is a Registered Professional Engineer,  
7 civil engineer. He's had 14 years of experience with DWR  
8 in the O&M area. He's worked on State Water Project and  
9 has been involved -- intimately involved with permitting  
10 of projects on the State Water Project.

11 So we are very happy that Mark is taking over the  
12 reins for Mike. We have -- we work very closely with that  
13 group with our permits.

14 So, Mark, welcome aboard. Thank you for  
15 accepting the challenge.

16 DWR FLOODWAY PROTECTION SECTION CHIEF HEROLD:

17 Thank you.

18 PRESIDENT CARTER: All right. With that, we'll  
19 turn it over to Mr. Shapiro.

20 (Thereupon an overhead presentation was  
21 Presented as follows.)

22 MR. SHAPIRO: Mr. President, thank you.

23 I will endeavor to be briefer than usual in light  
24 of the late hour. But I also want to pay due respect to  
25 Ms. Burroughs, who hasn't seen any of this briefing yet



1 despite the subcommittee members seeing it. So I do want  
2 to provide enough detail, broad context.

3 Did Ms. Rie leave or is she still here?

4 VICE-PRESIDENT HODGKINS: No, she had to leave.

5 PRESIDENT CARTER: Yes, Ms. Rie had to leave for  
6 a prior family commitment.

7 MR. SHAPIRO: Okay. So we're going to tag team  
8 this. I'm going to present the majority of the general  
9 information. And then Paul Brunner is going to do a more  
10 detailed presentation on alignment in light that the  
11 Board's expressed interest in that issue at the  
12 subcommittee meeting and also the Rices' interest in their  
13 presence here today, so we can give the Board a good  
14 understanding of the basis for those decisions.

15 There are handouts, which I hope you have. And I  
16 have a few extra if anyone in the audience would like one  
17 as well.

18 --o0o--

19 MR. SHAPIRO: The project goals for the Feather  
20 River setback levee are really the same project goals as  
21 we've had throughout the entire project. And that  
22 includes Phases 1, 2, 3, and Yuba Phase 4, which are all  
23 complete and those words are all certified.

24 The project goals are achieving at least a  
25 200-year level of public safety flood protection for south

1 Yuba County. Obviously we're working towards regional  
2 system and environmental benefits. We obviously want to  
3 complete and have committed to the Rec Board to complete  
4 the remaining major public safety elements in 2007 and  
5 2008. And hopefully your action before the break in  
6 approving segments 1 and 3 will allow us to continue on  
7 that schedule.

8           And, finally, achieving a fair and equitable  
9 state and local cost share with the local cost share  
10 generated through continued development, the local  
11 developers have come up with somewhere in the neighborhood  
12 of \$70 million thus far. And that has been a very  
13 effective way of us funding the work we've done to date.

14                               --o0o--

15           MR. SHAPIRO: So this is the overview of the  
16 presentation. There's five essential points, with  
17 subpoints under each of them. I'm going to go through a  
18 little bit of a history on the setback levee, provide some  
19 detail of the benefits of the setback levee, talk about  
20 the design, permitting, and construction schedule. I'm  
21 going to spend a little bit of time talking about the way  
22 this fits into the implementation and funding agreements  
23 that the previous board approved and that this Board has  
24 been briefed on. And then, as I mentioned, the final will  
25 be the presentation of the setback alignment.

1 --o0o--

2 MR. SHAPIRO: So I'm going to start with the  
3 history of a setback levee.

4 The setback levee has been contemplated for a  
5 number of years. In 2003 Yuba County Water Agency used  
6 Proposition 13 funds to do a feasibility study and  
7 programmatic EIR that identified the Feather River setback  
8 levee as a potential option. This section of the river,  
9 as you'll see in graphics now and particular in the  
10 alignment narrows down through section 2 to an extremely  
11 narrow area. And there's been interest in this area for a  
12 long time in widening out that channel.

13 Now, the prior Rec Board has approved the  
14 approaches for Phases 1 through 3. That was back in  
15 February through April of 2005, as we talked about earlier  
16 today. Those phases, as you know, are substantially  
17 complete. Certification has been received for almost all  
18 the reaches, with some erosion issues holding up one or  
19 two other issues.

20 And it's really been our private-public  
21 partnership that has allowed us to get the 135 million in  
22 flood protection improvements in. If you think about it,  
23 we've done that in about two and a half or three years.  
24 And there are just very few other communities in the state  
25 or in the country where you've seen that kind of

1 improvement that quickly, bringing a high level of flood  
2 protection, especially to a community that's been  
3 historically socioeconomically challenged.

4 --o0o--

5 MR. SHAPIRO: In May of 2006 the Board approved  
6 the approach for the Feather River Phase 4. And that was  
7 assumed at that point to be strengthened in place and the  
8 Yuba River. At that point we could not identify  
9 sufficient funds to fund the setback levee. And so our  
10 assumption was we would not construct one.

11 In August of 2006, there was a landowner capital  
12 call. That money from the Plumas Lake developers down in  
13 the south funded the remaining improvements required in  
14 the main section of the Yuba. And that actually took most  
15 of the communities of Linda and part of Olivehurst out of  
16 the deep floodplain. And so that was a tremendous advance  
17 of money that really helped us advance public safety.  
18 That work is completed, as you know, certified.

19 In November of 2006, when the propositions  
20 passed, we took another look at the opportunity for a  
21 setback levee. We've been talking with DWR for literally  
22 over a year about the setback levee. And DWR had  
23 expressed a lot of interest in doing the kind of system  
24 changes, as you know, that are part of the white paper and  
25 the Flood Safe program. And so we rescheduled the second

1 capital call, which would have been for Feather River  
2 strengthen in place, and said, "Let's take some time.  
3 We're not holding the schedule up at this point. And  
4 let's evaluate our options."

5 --o0o--

6 MR. SHAPIRO: We talked, as I said, to DWR. They  
7 liked the project. They wanted to see it constructed.  
8 They did not make any funding commitments. I'll be really  
9 clear on that. They did not. But they said this is the  
10 kind of project that they would like to see funded.

11 We've received tremendous written support. We've  
12 received it from Sutter County across the river, as we  
13 talked about before; Levee District 1, which is in Sutter  
14 County; Friends of the river; SYRCL, which is the South  
15 Yuba River Citizens League; Sierra Club; Yuba County Water  
16 Agency; even SAFCA. And we have about eight or nine  
17 others that have supported this project.

18 And then in February of 2007, after making the  
19 determination that we felt we could swing it, we could get  
20 this done, we had the local funding share from the  
21 developers available, and we had we believed state money  
22 potentially coming in from the propositions, we certified  
23 the EIR and we selected a setback levee.

24 As you know, in May of 2007 the certification of  
25 the levees was done by the Corps. And in May Three Rivers

1 also set a second capital call for 9.1 million from the  
2 developers, and that money was deposited into escrow. And  
3 that's the money that basically we will operate under for  
4 the next few months.

5 --o0o--

6 MR. SHAPIRO: So you've seen this drawing many,  
7 many times. Just to make clear for everybody, using the  
8 mouse, from basically mile marker 17 up to about 22 1/2 is  
9 the proposed Feather River setback levee. It's about 5.9  
10 miles and it replaces a little over 6 miles of existing  
11 levee.

12 --o0o--

13 MR. SHAPIRO: So let's talk about the benefits of  
14 the setback levee.

15 --o0o--

16 MR. SHAPIRO: There's four primary benefits, and  
17 I'll talk about each in a little bit of detail. It's  
18 superior flood protection. It provides regional benefits.  
19 It's consistent with the flood safe program of what the  
20 state is trying to do. And it creates a lot of land  
21 available for habitat or, frankly, continued farming in  
22 the floodplain.

23 --o0o--

24 MR. SHAPIRO: So, first, superior flood  
25 protection. This levee, like the Bear River setback levee

1 that's already been constructed, is built to current  
2 engineering standards. It's not a retrofit. Slurry walls  
3 can be very effective.

4 But there's really no question that constructing  
5 a new levee from scratch when economically feasible is the  
6 superior option because you know exactly what material  
7 goes into it. It's built with suitable soils. The soils  
8 in the Feather River levee are not suitable. They're very  
9 sandy. This setback will reduce and remove a river choke  
10 point and widen out the floodplain.

11 The current levee is actually built over old  
12 river channels. And this will move it away substantially  
13 from those old river channels. This will eliminate  
14 current significant erosion sites by setting the river  
15 back -- the levee back. And of course it achieves greater  
16 than a 200-year protection because of the widened channel.

17 --o0o--

18 MR. SHAPIRO: In terms of regional flood  
19 protection benefits, what this does is it lowers the water  
20 surface at that area and upstream. And so that has  
21 primary benefits to Marysville and Yuba City. But a 1.3  
22 foot reduction in that area for a hundred-year storm and a  
23 1.5 foot reduction for a 200-year storm. And it actually  
24 results in a 2.7 foot reduction in a hundred year and 3.0  
25 reduction in a 200-year in the most dramatic place.

1           This is really important for our neighbors from  
2 Marysville and Sutter County and represents a real  
3 cooperative effort. Neither of those communities have  
4 ongoing flood protection improvements right now. And if  
5 we can do something that lowers the water surface that  
6 substantially for them, it really is a wonderful regional  
7 benefit.

8           And because of the regulated nature of the  
9 Feather River and the addition of these acres within the  
10 floodplain, there are no downstream hydraulic impacts.

11                               --o0o--

12           MR. SHAPIRO: Here's a numeric representation of  
13 the quality of the statement I just made. For example, if  
14 you look at Marysville on the Yuba at 2.6, in 1986 the  
15 water surface elevation was 77, in 1997 the water surface  
16 elevation was 78.5. In a hundred-year storm it would now  
17 be 73.9. And in a 200-year storm it would now be 77.2.  
18 So it's just a great way to understand the significant  
19 water surface reduction benefits for those communities.

20                               --o0o--

21           MR. SHAPIRO: The program is consistent with the  
22 Flood Safe California program. We meet or exceed every  
23 one of the criteria included in that program. The program  
24 talks about the need to make system changes, that we can't  
25 just strengthen all the levee in place, and this does



1 that. It reduces erosion. It lowers O&M costs and allows  
2 us to recognize the fluvial nature of the river.

3 --o0o--

4 MR. SHAPIRO: Importantly from an environmental  
5 perspective, this creates up to 1550 acres of habitat for  
6 restoration, mitigation, or other uses. You'll see there,  
7 it could be used for a mitigation bank, for habitat  
8 restoration. It could be state-owned land that's leased  
9 back for agricultural use. Our application to DWR  
10 presumes taking it in fee and transferring it to the  
11 state. So it really becomes a state choice as to what  
12 that land should be used for, which is a tremendous  
13 opportunity for mitigating other projects or allowing it  
14 to continue in agriculture until such time as those  
15 projects are needed, or even potentially restoration.

16 BOARD MEMBER BURROUGHS: If I could stop you  
17 right there for a quick comment.

18 MR. SHAPIRO: Sure.

19 BOARD MEMBER BURROUGHS: You don't have anywhere  
20 written that it could be continued for agricultural use  
21 other than lease back for agricultural use.

22 MR. SHAPIRO: Yeah, our discussions with the  
23 larger farming operations in that area was that they did  
24 not want us to have them continue to own it with a flowage  
25 easement over it. Their interest was in selling it.

1 Doesn't mean that they wouldn't potentially lease it back  
2 or that it wouldn't be leased to someone else. But the --  
3 we've talked to large operations, primarily in the north,  
4 that are completely covered by the setback area. And the  
5 Rices are a little different situation because the levee  
6 directly impacts and leaves some land in and some land  
7 out. But for the ones that are completely within the  
8 setback, really the universal message has been, "If your  
9 going to do this, we'd like you to buy our land or eminent  
10 domain. We're not interested in just having an easement  
11 over it." And that's why it's phrased that way.

12 In addition, in talking with senior management of  
13 Department of Water Resources --

14 SECRETARY DOHERTY: I'm sorry. I forgot to turn  
15 it off.

16 MR. SHAPIRO: Is the rate at which I should be  
17 presenting?

18 (Laughter.)

19 PRESIDENT CARTER: That's a hint.

20 MR. SHAPIRO: In our discussions with senior  
21 management at DWR, they were also clear they wanted the  
22 land purchased in fee. They did not want to be in a  
23 situation years from now when they have to put additional  
24 money into buying the remainder rights to use it for other  
25 purposes. So this creates the most flexibility.

1           And the final point there on that slide is  
2 important. With the setback on the Bear, we took measures  
3 in place to make sure that all necessary O&M could be done  
4 there. So, for example, as you will recall, there are  
5 areas down there where there are veld that have been  
6 planted. But for that veld we have an agreement with Fish  
7 and Wildlife Service, we can cut it out for O&M purposes.  
8 So that has been taken care of. And we have created an  
9 endowment to assure that the area is maintained. And the  
10 same would occur here.

11           SECRETARY DOHERTY: And that's written into the  
12 agreement, that you can touch an elderberry?

13           MR. SHAPIRO: Yes. Yes, because we so  
14 over-mitigated any impact, that the Fish and Wildlife  
15 Service acknowledged that there was such a benefit to the  
16 plant community that it was reasonable that if for O&M  
17 purposes and for flow we needed to impact them, we could  
18 without mitigation requirement.

19                               --o0o--

20           MR. SHAPIRO: So design, permitting, and  
21 construction schedule. I'm going to be very brief on this  
22 one. Segments 1 and 3 are out for bid. Now that the  
23 permit was issued, once 408 comes in, assuming Yuba County  
24 accepts the indemnification, we could construct one or  
25 both of those segments this summer. We are working with

1 the Corps on 408 and hope to hear obviously once an  
2 approval comes in.

3           Segment 2, design is underway. We are going to  
4 bid this one a little differently. We're talking about  
5 bidding it at a lower percentage completion so you can get  
6 input from a contractor as to how to construct it more  
7 cost effectively. And we actually will be in a position  
8 to send it out to bid in the next month or two.

9           The strengthen in place tie-ins can actually  
10 start this year. We can do the foundation work over the  
11 winter and then construct the actual embankment next year  
12 during the drier weather.

13           We have been doing land acquisition issues in  
14 stages working from the north to the south. We've been  
15 doing both voluntary and eminent domain land acquisition.  
16 As part of the alignment, Paul will share with you some  
17 statistics on the number of people we've interacted with  
18 and the overwhelmingly voluntary response to our request  
19 for rights of entry to -- excuse me -- rights of entry to  
20 come in and to do investigation.

21                               --o0o--

22           MR. SHAPIRO: Here's a slide that is almost  
23 unreadable on the TV. But it basically shows us moving  
24 forward through the project and outlines the particular  
25 aspects of each job and how we're proposing to schedule

1 it.

2 --o0o--

3 MR. SHAPIRO: So the last point that I'm going to  
4 address in any detail is the interplay with the existing  
5 implementation agreement and the funding agreement.

6 --o0o--

7 MR. SHAPIRO: As with the Bear River setback  
8 levee that we constructed, we found that multiple funding  
9 sources were required to fund the more extensive project  
10 that had regional system and environmental benefits. The  
11 Bear River setback levee was funded from three separate  
12 sources: The local dollars, Department of Water Resources  
13 Prop 13 dollars, and Fish and GAME dollars. And that's  
14 what allowed us to build a brand new levee, state of the  
15 art for flood protection, and also produce 600 acres of  
16 habitat for the environment.

17 Now that we've select the setback levee, we're  
18 working with the landowners to discuss amending the  
19 funding agreement to address the changed scope. As I  
20 noted earlier, our assumption when we negotiated it was we  
21 were doing a strengthen in place. And at this point we're  
22 just waiting for DWR's response on our application. And  
23 once we get that, we can dive to the table, we can work  
24 out the last of the details.

25 --o0o--

1           MR. SHAPIRO: Which brings us to the presentation  
2 of setback alignment. And I just want to briefly  
3 introduce this topic. And then Paul has a lot of detail  
4 and some excellent slides to help you understand the  
5 decision-making process.

6           The alignment has been an interesting discussion  
7 from a local agency perspective. And I'm going to ask the  
8 Board to think about as you review the alignment what the  
9 Board's role should be in reviewing that alignment. It  
10 seems to us as a local applicant that it's completely  
11 appropriate for the Board to basically look and say, "Did  
12 the agency do this arbitrarily" or did we have a  
13 legitimate basis for our decision? Did we have  
14 hydro -- did we have geotechnical experts who went in, who  
15 gathered information, who had a series of factors that  
16 they looked at and ultimately made a decision?

17           We have sought to be flexible in our alignment.  
18 You will hear from Paul on the circumstances where we have  
19 successfully moved the levee to accommodate individual  
20 landowners' interests in a way that we felt would not  
21 jeopardize the overall impact of the project. We have not  
22 been successful every time we've been asked.

23           And so this will really be a story of us and our  
24 experts trying to strike a balance of the factors that  
25 have to be considered. Because I may not have an

1 opportunity to speak later, I just want to note that I  
2 know the Board received a letter from Mr. Naylor,  
3 excellent letter that laid out the Rices' concerns. I  
4 trust you've received our response as well, which really  
5 lays out our attempt to explain the various factors and  
6 the necessary balancing that must occur in evaluating our  
7 experts' decisions and then moving forward with those  
8 decisions.

9           So unless there are questions on the basic  
10 setback that I've discussed, I'll ask Paul to go through  
11 the alignment.

12           VICE-PRESIDENT HODGKINS: When do you expect to  
13 hear from DWR on your application?

14           MR. SHAPIRO: The latest information that we  
15 heard is that we will hear the week after next. And we  
16 heard that during the break.

17           PRESIDENT CARTER: Mr. Shapiro, I noticed that  
18 your discussion of the basic setback didn't include a  
19 discussion on the downside of the setback. What are the  
20 negatives in the setback?

21           MR. SHAPIRO: The negatives are: It is a higher  
22 cost. It has potential socioeconomic impacts on farming  
23 in the area. But I do not believe there are any technical  
24 or flood protection negative impacts. And I'll look to  
25 Ric to ask if he has anything to add to that.

1 MR. REINHARDT: No.

2 PRESIDENT CARTER: I think you should not omit  
3 that discussion from your presentation.

4 MR. SHAPIRO: It was certainly contained in --  
5 well, I shouldn't say that. I believe it was contained in  
6 the EIR. I don't have a copy with me and I haven't  
7 memorized it. But, yes, we acknowledge that those are two  
8 absolute negatives, the higher cost and potential  
9 socioeconomic impacts to the community.

10 PRESIDENT CARTER: Right. We should attempt to  
11 present the whole story and not just the nice parts of the  
12 story.

13 MR. SHAPIRO: Thank you.

14 (Thereupon an overhead presentation was  
15 Presented as follows.)

16 MR. BRUNNER: Good afternoon. I'm Paul Brunner,  
17 the Executive Director for Three Rivers.

18 What I'm going to do is what Scott said, was  
19 piggyback on what he was just talking about. I think he  
20 set the ground rules really well for -- laid out what I  
21 was going to be talking about here and why we did the  
22 alignment the way it is.

23 But I do have some graphics. This is a -- really  
24 carries on from the Reclamation Board's subcommittee  
25 meeting on 22 March where we talked about this and the



1 alignment, and move forward from there.

2           We worked on the alignment for many years to get  
3 to this point. What you're going to see, we're going to  
4 about the floodway. I have a graphic for that. The  
5 geological conditions play a key to this. We're going to  
6 put the levee -- constructibility plays reducing impacts  
7 on residents where we can. There's an economics one. And  
8 then I think you'll -- as you go through here, there is an  
9 element of judgment that comes from building a levee and  
10 where we place it.

11           We factored all that in together based upon what  
12 you'll see here, and then made a judgment as to what we  
13 would do when we replace it. And we think we have the  
14 right alignment and right place for it.

15           If we were to move the alignment, we would have  
16 impact on our schedule at this point. That was a question  
17 that came up at the last Rec Board meeting.

18                               --oOo--

19           MR. BRUNNER: For the sake of the group, this  
20 slide shows the overview. This is the segment that Scott  
21 was just talking about. Let me find the mouse here and  
22 point out some -- this down here is Star Bend, Shanghai  
23 Point is over here.

24           The red lines here represent the existing levees  
25 that are there now. This is the setback area here. It's

1 color coded in blue, red, and yellow for a reason, because  
2 we plan on our construction to start at the north end and  
3 work our way down with the foundation. And then hopefully  
4 starting in September, if we get the money from the Prop  
5 180 funds that we just talked about the status and move  
6 forward on, we hope to start that in September.

7           We are starting our acquisition for land up in  
8   this northerly end here and moving down. Our next phase  
9   would be in this area with the acquiring land in the red  
10 area. The Rice family is in the red area right in this  
11 area right here.

12                   We would then carry on down with the yellow and  
13 eventually acquire all this property that you see in here.

14           Our goal is to construct the foundation during  
15 the winter time. That's weather dependent to a large  
16 degree. But to construct it. And then next spring to  
17 start the embankment and build this in the 2008 season --  
18 construction season and complete by 2008.

19           In 2009, we would degrade this levee -- the  
20 existing levee.

21 --o0o--

22 MR. BRUNNER: This next slide speaks to the  
23 floodway. And what you're going to see is a series of  
24 presentations that really takes the same snapshot. The  
25 last one showed the parcels in the aerial view. This one

1 is a aerial view muted in the background. But here you'll  
2 see, again, red is the consistent color for the existing  
3 levees. And there's a noticeable choke point, Scott was  
4 mentioning it in his briefing, right in through here where  
5 we currently have our setback. And the green is shown in  
6 setback. And the color, green for the levees will always  
7 be the setback location.

8           You'll notice that we have this large expanded  
9 floodway that is now created -- or will be created when we  
10 build the setback.

11           The consistency is that we want to have this  
12 width in here as consistent up here as downstream, so that  
13 the water continually will flow through there and will not  
14 have this choke point causing the water to backwater and  
15 causing the erosion problems that we have and move  
16 forward.

17           Now, the point is, why did we build it in the  
18 green area? Part of it is the hydraulic model that we  
19 have here. But a large part of it ties with soils and  
20 soils types that we would then build over.

21                               --o0o--

22           MR. BRUNNER: To start the discussion on soils,  
23 the next slide does talk about a 1911 -- or present a 1911  
24 graphic of the Feather River as to how it has flowed over  
25 that time.

1           During this time period Plumas Lake actually  
2   existed. It's right over in here. It wandered around the  
3   Feather River, flowing from here down to the my left.  
4   Notice that it kind of -- really kind of wanders up over  
5   through here. It currently doesn't do that. But it comes  
6   along through here.

7           The whole point of showing this slide is that it  
8   has changed cores, it's meandered in this area, and that  
9   it's had a big impact on sediments and soil deposits over  
10   time. And that sediment deposits over time are reflected  
11   on this map here.

12                               --o0o--

13           MR. BRUNNER: Now, this is a USGS map. It shows  
14   an aerial behind it but also displays different type of  
15   soil types. For simplicity, the QA soils represent more  
16   recent sediments that came about, much more permeable.  
17   The QRs and QMs represent much older formation, Modesto  
18   formation, riverine formation, that are older and less  
19   permeable. For a levee location, the older formations are  
20   better to build upon.

21           You'll notice that the area here for the Yuba  
22   side of the river is really out in the QA area almost all  
23   the way. And when I show you another slide coming up,  
24   you'll understand why we have boils and issues and  
25   problems with our levees out in that area right now.

1           Interestingly, you know, when I saw this slide  
2 being prepared, the work on it, I noticed that our friends  
3 across the river in the Sutter County area, their  
4 particular levee is built a lot on the Modesto levee, a  
5 soil which is a better condition.

6           This scheme of QA and QM and QR soil types will  
7 come up over and over again throughout our briefing.

8                               --o0o--

9           MR. BRUNNER: What I've done here is highlight  
10 the QA around the river. Because when a river flows and  
11 it has a floodway, it actually raises above and beyond the  
12 banks and floods the area as it flows downstream, and into  
13 a much wider area than the rivers typically flow.

14           I overlaid the QA that's in yellow with the 1911  
15 map. And you'll notice that the alignment with that QA in  
16 previous river locations is almost dead-on, showing that  
17 the deposits over time with sand and sediments have come  
18 through here, flooded out here, left the QA soils along in  
19 this area; and represents really an area of large  
20 deposits. You'll see later on when we view soil boring  
21 locations for you to point that out and a cross-section  
22 that will be coming up in a second.

23           This red area here that you see, these little red  
24 dots, represent underseepage area -- boil areas that we've  
25 been experiencing over time or historically. And they're

1 out in this QA area predominantly.

2 --o0o--

3 MR. BRUNNER: This slide introduces the setback.

4 And what we did with the setback, keeping in mind that we  
5 have the hydraulic model of the floodway, that to try to  
6 keep a consistent channel width, we lay down the setback  
7 that's shown here in green. And part of the process was  
8 to really be as close as possible and stay on the QM  
9 soil -- or QR soil, which is the better soil type for  
10 levee foundations, and hug along through here as much as  
11 possible and then eventually connect that here at Shanghai  
12 Point in this proximity here.

13 This area down here where Plumas Lake is is  
14 really just a lot of sandy deposits and that that we'll --  
15 we have to deal with. We'll have cutoff walls and that  
16 when we're through as we build the setback. Part of the  
17 economic justification in looking at the project and  
18 working through it is it seemed really unreasonable that  
19 we pull the levee way back down here to try to miss that  
20 totally, is that that would just impact more farming and  
21 more land is the -- we had to use some judgment to work  
22 through that. And we work through here, but staying on  
23 the QM soil as much -- or QR as much as possible and then  
24 connecting back over through here.

25 Above this point here, once we leave Plumas Lake,

1 somewhere in the neighborhood of 70 to 75 percent of the  
2 levee that we'll be building is on the better soil.

3 --o0o--

4 MR. BRUNNER: Now, this feature of the map shows  
5 it again, with the floodway, the river being in blue. And  
6 then we overlay -- and this is a little bit hard to see,  
7 but it does show the topo map that we have. And during  
8 our discussions and our documentation and also with the  
9 Rice family, we had mentioned this concept of a bench.  
10 And a bench is just a higher elevation where the soil is  
11 higher in one ground level and then it slopes down to a  
12 lower one.

13 There is a bench in the area where the red dots  
14 are. And the topo would verify that. You'll notice that  
15 that bench really tracks along the edge of the QA. Now,  
16 we didn't highlight the QR or the QM, but that's right on  
17 the other side over here not in color. So that bench  
18 really does exist right at the edge of the formation.  
19 That becomes an important point on constructibility and  
20 what we're doing with levee work into the future as to how  
21 we build the levee and what we do.

22 Again, here's the green setback, the red being  
23 the bench. The QA soil being the bad -- or the more sandy  
24 soils. And then we're trying to build the levee as much  
25 as possible on the better soil.

1 --o0o--

2 MR. BRUNNER: Now, if I take a cross-section  
3 right here and look at it, you'll see this. Again, this  
4 is the Sutter side of the river. This is an old remnant.  
5 Apparently we're building the second setback on this  
6 segment of the river. There was an old remnant right here  
7 built along the river. And now this is the existing levee  
8 that's there. We're putting the setback levee on top of  
9 the QM-QR soil.

10 --o0o--

11 MR. BRUNNER: And in this particular  
12 cross-section I picked an area right there where that's  
13 where the levee is is on the QM-QR soil.

14 --o0o--

15 MR. BRUNNER: This levee -- large parts of these  
16 levees do have a cutoff wall. The QM-QR soil is not  
17 totally impervious, though we are putting in some cutoff  
18 walls.

19 But here's the impact of a bench, is that from  
20 here where we go off and we may slope down into this area  
21 here, we pull the property off. And this is shown  
22 approximately somewhere 2-, 300 feet away from the levee,  
23 somewhat of a typical cross-section but in that area. We  
24 would then build a higher levee -- or not higher, but a  
25 levee that actually is higher from ground surface, same



1 elevation. But more materials would have to be included.  
2 That's shown in the red. The foundation would be on QA  
3 soils, not as good as the QM-QR soils.

4 The cutoff wall would go deeper than this wall  
5 here, all adding to cost. There's also a drainage issue  
6 along the toe of the land side here that we would then be  
7 working with and having to solve if the water came down  
8 here and drained to this low spot. Perhaps having to put  
9 a pump station in to handle that problem in that.

10 The yellow area that you see here -- we have soil  
11 borings, not a huge amount of soil borings, but we have  
12 soil borings that we felt technically represent what we're  
13 doing on the project. And these represent soil borings  
14 that we've taken. And they would show that this is a lot  
15 of QA soils in through here. Which then you'll see from  
16 that bank -- or that bench, it comes down, and we could  
17 plot down through here, that it does slope down, and we'd  
18 have this effect at the cutoff wall.

19 --o0o--

20 MR. BRUNNER: What I'd like to move to here is to  
21 actually point you to another little handout that we gave  
22 you, which was our examples of trying to work with  
23 residents and what we have. There are several examples.  
24 I'm going to walk through some graphics here.

25 Scott did point out one of the points where, when

1 we'd been working on this project, not acquiring the  
2 property by fee but through getting easements right to the  
3 entry to do our work, we have approached many of the  
4 residents out there, 35 landowners representing over 50  
5 parcels that are out here. And we were able to reach  
6 agreement with them all. There was one that balked and  
7 then eventually we were able to work that out without  
8 going to court.

9 SECRETARY DOHERTY: That's just for the right of  
10 entry; that's not --

11 MR. BRUNNER: That's just for the right of entry.

12 SECRETARY DOHERTY: That's just for looking and  
13 exploration and --

14 MR. BRUNNER: Well, we were -- when we do  
15 approach the people, there's an opportunity there to  
16 interact with them, talk about why we're doing and what  
17 we're doing on the project. And it's also part of the  
18 point that we're -- there is a beginning of an interaction  
19 with the residents at that time.

20 The other three examples here, there's these  
21 words here, I'm going to walk through here on the slides  
22 and explain to you some of the things that we've tried to  
23 do on the levees.

24 --o0o--

25 MR. BRUNNER: I'm going to start actually with

1 the middle property, which is Rice family's property, go  
2 to this one, and then swing back to this one right here.  
3 So I'm going to start in the middle, go the right in here.

4 And as I walk through the three examples, all  
5 three examples -- and this is key -- is we met with the  
6 residents, we talked with them to some degree, and  
7 expressed -- desire was given about what was going. That  
8 meeting could take many different forms, you'll find as we  
9 talk through this.

10 But the key for us to make an adjustment was  
11 based upon true to our basic design presumptions or  
12 criteria that we use. None of these alignments that we  
13 have here moved the alignment off of the QR-QM soil. They  
14 stayed there. And if they stayed there, we could do our  
15 hydraulics still. We tried to make the adjustment to  
16 match what the families were talking about who own it.

17 --o0o--

18 MR. BRUNNER: This is one of the items that we  
19 worked with. And this represents the work that we did to  
20 try to accomplish with the Rice family. And we did move  
21 the levee 90 feet. This one came about really somewhat  
22 perhaps by the Rice family by happenstance, because on --  
23 when we were doing our certification of our levee, or  
24 project, at our EIR meeting on February 6th apparently,  
25 there was a discussion between our engineer, real estate

1 folks about -- in the hallway where we were doing that  
2 about -- desire about our project and moving it. And we  
3 went back, my design team, and tried to adjust the  
4 project. And we did adjust 90 feet, the red here being  
5 the original alignment. And then we adjusted the 90 feet  
6 and pulled it to the blue alignment. We didn't get  
7 totally off the property, but we stayed on the good soil.  
8 We didn't move it out. But we adjusted as far as we  
9 could.

10 We did save one acre. They still have five acres  
11 impacted on the property. But we did do that.

12 --o0o--

13 MR. BRUNNER: Norm Keller, resident had some  
14 interaction with, and asked us to -- if we could move the  
15 levee somewhat to avoid having more property behind the  
16 levee that make it unusable or -- and make his property  
17 more valuable.

18 We stopped, we considered, and we made an  
19 alignment adjustment, again staying on the good soil, felt  
20 that the hydraulics would work out, and moved forward.  
21 And again you'll see that here's the red alignment, and we  
22 adjusted to the blue alignment, which then freed up the  
23 yellow.

24 --o0o--

25 MR. BRUNNER: This is probably the most recent

1 adjustment that we made. In this particular case -- this  
2 is the Anderson family, where the red represents the old  
3 alignment and the blue is the new alignment. In this  
4 particular case we just nipped the edge of the Anderson  
5 family's parcel here. But it became really apparent when  
6 she came and talked at our TRLIA board meeting that we  
7 were impacting some redwoods that her son had planted, but  
8 had been recently deceased, and really wanted the redwoods  
9 to stay. We listened to that and then we went back and  
10 worked with her and adjusted the levee to pull it back off  
11 and not go through that property area to take out the  
12 redwoods. So we did do that.

13 --o0o--

14 MR. BRUNNER: My final slide that I have is the  
15 question that's come up about economics and how we chose  
16 the levee. Under the federal criteria, we do -- the  
17 criteria specifies that the -- federal criteria specifies  
18 that the economically preferred alternative is that which  
19 provides the greatest overall net benefit.

20 The setback does cost more, but it provides much  
21 more benefits. And that's this column right through here.  
22 And as a federal levee system, we believe that that's a  
23 great criteria to use as we go forward for federal buy-in  
24 for the projects and incorporation into the project.

25 If you do this comparison over here, a cost

1 difference, is that for, say, between two and -- one of  
2 the setback ones is 3A, for \$11.9 million more we get 35  
3 million more benefits. For this one here for 14.5 million  
4 more we get \$58 million -- almost \$59 million more  
5 benefit.

6 Overall this is their net benefit that we get for  
7 this particular project that we're working on.

8 In overall, our particular project, the alignment  
9 is based upon judgment. It's based upon the criteria for  
10 a floodway. It's based upon soil types and trying to  
11 build as best levee that we can, weighing a whole bunch of  
12 factors together.

13 So with that, I'm going to stop and ask for  
14 questions.

15 SECRETARY DOHERTY: What happens if another group  
16 of homes is red tagged? And why were they red tagged?  
17 And did -- is he able to put up his share of the money  
18 that he's supposed to?

19 MR. BRUNNER: I don't understand the concept of  
20 red tagging.

21 SECRETARY DOHERTY: In Plumas Lakes there were 62  
22 homes that were red tagged because of falsifications of  
23 records.

24 MR. BRUNNER: Oh, with D.R. Horton?

25 SECRETARY DOHERTY: Yes. Aren't builders putting

1 up money?

2 MR. BRUNNER: The builders are putting up money,  
3 sure.

4 SECRETARY DOHERTY: So does that affect him? Is  
5 he able to put up his share? Is it going to affect the  
6 economic evaluation?

7 MR. BRUNNER: Well, let me try to explain this.

8 What the -- in the case of a specific developer,  
9 the very first development agreement -- or the next escrow  
10 around that we have, that's my next presentation actually  
11 if we have time to go there.

12 There's a second capital call which I reported on  
13 at one of the previous Rec Board meetings. The developers  
14 have put money into the escrow account to make that  
15 happen. It just so happens that D.R. Horton actually had  
16 put I think \$2.1 million into the escrow for the levees.  
17 Certainly it's -- into the future we'll see what happens  
18 there for that particular developer. But they did already  
19 contribute to that second capital call. And the money's  
20 in the escrow that will be used when we start the project  
21 again with Prop 180 funds coming in.

22 Scott, did you just want to answer on that?

23 MR. SHAPIRO: I just want to expand on it a  
24 little bit.

25 That particular developer has already paid its

1 entire share for the entire project in. They have  
2 basically paid to the county, and county has for us, if  
3 you will, 100 percent of the money required for them to  
4 build out their entire project. So that developer it's  
5 not an issue.

6 I will note that you can't build a single home in  
7 Plumas Lake until you've already forwarded the money. And  
8 that's not move into the home. That's get the building  
9 permit in the first place. And, finally, I noticed, only  
10 through the newspaper articles, whoever had falsified the  
11 records apparently has been fired and the bolts have been  
12 fixed and the homes are under construction again.

13 So it's certainly an issue from a public safety  
14 standpoint for home building. But the way our program is  
15 structured, it doesn't have a financial impact on us.

16 PRESIDENT CARTER: Mr. Brunner, on the red and  
17 blue lines where you show the levee footprint, does  
18 that -- does that include setbacks from the levee? And if  
19 it does, for example, the classical ten-foot waterside,  
20 ten-foot landside? Or does it include other setbacks? As  
21 you heard today, it's staff's intension to seek a larger  
22 setback in the future in areas. And so what does this  
23 plan show?

24 MR. BRUNNER: This particular plan -- well, this  
25 plan here on this graphic that I showed, the dark line



1 here is the center line. On this particular item here,  
2 this would be a center line also. So it's not trying to  
3 portray the width of something on those graphics.

4 But on here we are trying to show the width of  
5 the right of way.

6 PRESIDENT CARTER: Show the Anderson parcel.

7 MR. BRUNNER: The Anderson parcel. Anderson  
8 parcel only showed the center line. And on the scale here  
9 it would just be one-half of the --

10 PRESIDENT CARTER: Okay. So it shows the eastern  
11 half of the footprint.

12 Now, does that eastern half of the footprint  
13 include the landside setback or not? And if it does, what  
14 is that?

15 MR. REINHARDT: Ric Reinhardt, Three Rivers  
16 Program Manager.

17 Yes, we do have the 50-foot landside setback and  
18 then we have an additional as much as 60-foot utility  
19 corridor on top of that. And both of those were reflected  
20 on this drawing.

21 PRESIDENT CARTER: Okay. So the physical dirt  
22 levee is defined by the center line -- the dark dash  
23 center line. And then what you're saying is that there's  
24 a 50-foot landside toe setback plus an additional 60-foot  
25 utility corridor that is all encompassed in that narrower

1 blue dash line, is that -- did I hear that right?

2 MR. REINHARDT: The current setback alignment is  
3 the center line of the levee. And so from that point to  
4 the outer width includes the levee and both of those  
5 setbacks that I told you about, 50-foot clear zone and  
6 then the utility corridor.

7 PRESIDENT CARTER: Which was -- you said 60 feet?

8 MR. REINHARDT: About 60 feet.

9 PRESIDENT CARTER: Okay. So we have essentially  
10 got land there -- property there that we're talking about  
11 that is 110 feet from the toe of the physical levee?

12 MR. REINHARDT: And that's very similar to the  
13 approach we took on the Bear River, although not exactly  
14 the same. We took a 50-foot landside easement and  
15 additional easement outside of that to be with utilities  
16 and other issues.

17 PRESIDENT CARTER: Thank you.

18 Any other questions for Mr. Brunner on what he's  
19 presented so far?

20 Oh, I'm sorry. Steve.

21 CHIEF ENGINEER BRADLEY: Yeah. Where the levee  
22 goes across the QA soils -- I mean not all of it's on the  
23 QM-QR soils -- is that levee structured different than on  
24 the harder, more impermeable soils? Is it wider? Will  
25 you tell me whatever it is? And is the seepage wall much

1 deeper in through there like you talked about earlier?

2 MR. BRUNNER: Well, it definitely follows more of  
3 a red model here, Steve. It goes deeper to take that into  
4 consideration to handle that situation.

5 As far as it being wider and that, Rick, do you  
6 want to address that?

7 MR. REINHARDT: The most significant issue is  
8 settlement. We do experience more settlement on those  
9 soils and so we will have to slightly overbuild it, much  
10 like we did on the Bear River.

11 CHIEF ENGINEER BRADLEY: Okay.

12 PRESIDENT CARTER: Thank you.

13 Please proceed.

14 MR. BRUNNER: If there are -- you know, if there  
15 are other technical questions, I do have my technical team  
16 here from GEI. Alberto Pujol, Dan Wanket is here also  
17 from GEI. And you've already met Ric Reinhardt to answer  
18 questions too.

19 And I'm at the end of the presentation as far as  
20 our alignment. Is there any other questions?

21 PRESIDENT CARTER: Are there any other questions  
22 as far as alignment?

23 SECRETARY DOHERTY: Yeah. Why'd you go down and  
24 build in Plumas Lakes. Just think, life would have been  
25 so much simpler.

1           PRESIDENT CARTER: That's not an alignment  
2 question.

3           (Laughter.)

4           MR. SHAPIRO: We didn't.

5           MR. BRUNNER: We're just trying to construct the  
6 levees that we said we'd construct.

7           PRESIDENT CARTER: So do you have more?

8           MR. BRUNNER: No, not on this topic. I have more  
9 on the next topic.

10          PRESIDENT CARTER: Okay. Then we'll move on to  
11 Item 6 on our agenda.

12          MR. NAYLOR: Do we have public comments?

13          PRESIDENT CARTER: Oh, I'm sorry. I apologize.

14          Mr. Naylor.

15          MR. NAYLOR: Yes.

16          PRESIDENT CARTER: An oversight on my part. I  
17 apologize.

18          MR. NAYLOR: I can't blame you for wanting to get  
19 out of here.

20          (Laughter.)

21          MR. NAYLOR: My name is Robert Naylor.

22          Can you hear me?

23          I' here representing Mr. and Mrs. Thomas Rice.

24 As you know, we made a brief appearance a couple of weeks  
25 ago. As a result of that appearance, for the very first

1 time, on May 23rd, TRLIA did agree to meet with us and go  
2 over much of the information that TRLIA has just shared  
3 with you. And we appreciated that meeting. But this was  
4 11 months into the process from the first EIR that there  
5 was any significant response. And Mr. Rice has a  
6 presentation which -- by the way, have you all got this  
7 document? I don't have the electronics and graphics  
8 capacity. So it's going to be a lot of the same material.  
9 But I want you to take a look at these maps.

10 As a result of representations in the letter that  
11 TRLIA wrote you about his being a Johnny-come-lately, he  
12 put together a chronology which is at Tab A. And he'll  
13 have some remarks following my remarks on that issue.

14 But let me just take you through these tabs.  
15 It's a lot of the same material, so this should go  
16 quickly.

17 What I did in Tab B is outline in red what I call  
18 the family farm parcels, the center of this reach of levee  
19 segment 2.

20 That's really a strange sensation looking at your  
21 hand.

22 You can see outlined in red the family farm  
23 parcels. Mr. Rice's parcels are the ones on the east  
24 side. He'll probably comment on why his most important  
25 parcel is the one that is being impacted in terms of his

1 overall farming business. That's his crucial piece.

2           Tab C you can see I outlined in red also. This  
3 is the map of the alternatives that were considered in the  
4 alternatives analysis by TRLIA. And you can see that the  
5 two alternatives -- two alternative setback levees --  
6 three setbacks were considered in all -- do not impact or  
7 come close to impacting the family farm.

8           In Tab D -- this gets a little harder to see --  
9 but again this is placing these parcels in the map that  
10 shows the seepage and boil problems that have occurred on  
11 the existing levee. And those seepage boil problems  
12 are the red spots that are out toward the river.

13           The thing to note here is that the area for most  
14 of this property, and certainly the Rice parcel, is not  
15 close to the seepage and boil spots, and that they have  
16 not had problems with the existing levee immediately west  
17 of these parcels, even though it's QA soil.

18           Now, Tab E is the QA, QR, QM map that Mr. Brunner  
19 discussed. And it's our view that a modest westward  
20 adjustment in the neighborhood of 250 to 300 feet of the  
21 levee alignment in that area would still allow them to be  
22 on QR soil and have almost no other negative consequences.  
23 There would be a slight increase in QA soil. But compared  
24 with the long stretch of QA soil to the north over here  
25 and the long stretch of QA soil over near what used to be

1 Plumas Lake, when it was a lake, it would be a minor  
2 increase. And it would succeed in saving major impact on  
3 several family farms in that red square area.

4 Looking -- if you'd sort of flip back and forth  
5 between D and E, you can see that TRLIA's prepared to  
6 build a levee on QA soil right next to the largest problem  
7 areas and they're not prepared to do any increase in QA  
8 soil in the area of these small family farms where there  
9 haven't been problems in the area to the west.

10 And it's that lack of consistent logic that we  
11 are puzzled about. And we came away from our meeting on  
12 May 23rd simply unpersuaded that they couldn't make an  
13 adjustment here. And, yes, it would require -- when they  
14 have to expand QA soil foundation, it would require a  
15 change in construction. But they're willing to do that  
16 along very significant stretches of this segment 2.

17 And by the way, the advantage of doing a westward  
18 adjustment here is that they'll not have to acquire as  
19 much property. So the construction costs tend to get  
20 offset by lower acquisition costs.

21 Now, Tab F is the topographic map. And this is  
22 pretty hard to look at even when -- by the way, these maps  
23 were sent to us by TRLIA electronically. And we did our  
24 best to kind of blow them up and print them in a way that  
25 you could follow the discussion.

1           And this goes to the question of the bench. I've  
2   been out to Mr. Rice's property. And there is no  
3   topographic bench at the northern edge of his property.  
4   And the immediate adjacent parcel to his property to the  
5   south, there is a bench in the sense that that land -- and  
6   Mrs. Rice's grandfather did this -- that land has been  
7   graded so that it would level out to allow flood  
8   irrigation. And apparently this is a common technique,  
9   and there tend to be stages. But it doesn't speak to the  
10  construction conditions underneath that bench. This was  
11  soil that was, you know, piled up there in order to have  
12  an irrigation -- a level irrigation plain.

13           I don't know, there may be benches elsewhere  
14  along this alignment. I'm not disputing that there  
15  isn't -- there is obviously some topography. But in the  
16  area -- in this general vicinity of these red outlined  
17  parcels, we didn't see a bench and we're just not  
18  persuaded. We think if there is a bench, it's man made  
19  and it doesn't speak to the construction.

20           So we're basically -- in the sum, we do not see  
21  that the soils analysis on this part of the setback levee  
22  justify the alignment in precisely where it is now. By  
23  the way, the first time that we ever heard of a 90-foot  
24  adjustment was at this meeting on May 23rd. So that  
25  struck as an interesting surprise to get that. And maybe



1 there's -- maybe they've already adjusted 90 of the 250  
2 feet that we're claiming. Because I don't know whether  
3 we're using the old centerline maps or something that  
4 reflects the 90-foot adjustment that they claim to have  
5 made. But we don't think the adjustment has been shown to  
6 Mr. Rice. And he may want to add to that -- that comment.

7           Let me turn to the letter that was sent to us by  
8 TRLIA. And I'm getting pretty close to the end in the  
9 interests of time. But basically what you've heard is  
10 that there are lots of factors that are taken into account  
11 when they make a judgment. And they outline seven factors  
12 in their letter. And when I hear something like that, it  
13 would concern me because I know this Board does not want  
14 to get into second guessing professional engineers when  
15 they're making a professional judgment about where an  
16 alignment should go.

17           But if you look at the seven factors, the first  
18 is ensuring that the new channel is wide enough to improve  
19 hydraulics. Well, we're conceding that a major setback is  
20 probably indicated. And we're not disputing the idea of  
21 the setback. We're not arguing for repair in place. And  
22 if there were a 250-foot adjustment, about 90 percent or  
23 more of the setback that's proposed would be preserved.

24           Secondly, the second factor is avoiding certain  
25 areas where historic boils and seepage demonstrate a

1 severely damaged foundation. Well, this property is not  
2 in one of the historic seepage areas. So that's not a  
3 factor in this particular parcel.

4           Selecting appropriate soil types where possible.  
5 Well, that's -- I spoke to that. That is a factor. But  
6 we're arguing for a modest increase in QA and keeping the  
7 bulk of the existing QM and QR foundation in the design.

8           The fourth, where possible, siting a levee on the  
9 topographic bench. Well, I spoke to the bench. We don't  
10 think that's a compelling issue in this particular  
11 segment.

12           Point 5, avoiding certain existing through-levee  
13 or levee-adjacent infrastructure. I don't think that's an  
14 issue. Point 6, seeking to avoid where possible placing  
15 the new levee on relatively new alluvium which settled  
16 within the historic river channel. I think that's the  
17 soils issue repeated.

18           And, seven, attempting to minimize disruption to  
19 homeowners and businesses, both social and economic,  
20 including agricultural operations. Well, that's the  
21 factor we don't think has been adequately addressed in  
22 this particular instance. And we don't think that the  
23 other factors outweigh the argument in favor of again a  
24 modest adjustment.

25           On the timing issue, it's not really Mr. Rice's

1 fault that the first significant meeting we got after a  
2 lot of trying was on May 23rd. It sounds a little hollow  
3 to say you can't make an adjustment -- a modest adjustment  
4 in your design, which by the way they've been doing  
5 apparently in two other instances, and still stay on a  
6 construction schedule that will allow you to finish in the  
7 winter of 2008-9 because they do not plan to tear down the  
8 existing levee, which they just testified, until the dry  
9 weather conditions of 2009.

10           So I guess the bottom line is we don't think Mr.  
11 Rice has been particularly fairly dealt with until just  
12 recently. We think there -- this Board could take a look  
13 at this. And we urge the Board to consider what I've  
14 said, consider urging and requiring TRLIA as a condition  
15 of their permit to make an adjustment that would save this  
16 and a couple of other family farms.

17           PRESIDENT CARTER: Thank you.

18           Questions for Mr. Naylor?

19           Thank you very much, Mr. Naylor.

20           Mr. Rice.

21           MR. RICE: Thank you. And in the interests of  
22 time, I will also try and keep my remarks concise. But  
23 I'll be glad of course to go into detail. I'll elaborate  
24 as necessary.

25           I was wanted to give the members here a little

1 bit more background to understand where I'm coming from as  
2 well.

3 I'm not a farmer just by chance. I'm a farmer by  
4 choice. I have a Masters Degree in Engineering. I'm  
5 currently a master level engineer for Agilent  
6 Technologies, a major electronics company. I know how to  
7 look at data. I know how to look at maps. I know how to  
8 do analysis and know proper engineering procedures.

9 So when I went to meet with TRLIA I was able look  
10 at their data. I was going in ready to be, not  
11 necessarily happy, but give them the chance to convince  
12 me, to show me that what they had was without a choice as  
13 to what had to be done.

14 Had they had the data to convince me, I would  
15 have taken my lumps and started packing. I do not believe  
16 they have made that case to me.

17 What I want to do is basically -- Mr. Naylor has  
18 very concisely and clearly presented what we think the  
19 current situation is. We've detailed for you some of the  
20 issues, inconsistencies, and really imbalances we think  
21 we're seeing in the current approach in how the judgments  
22 are being applied.

23 And we think we do have the case here saying that  
24 we think they can provide a better solution, that they can  
25 find something that more clearly meets the same criteria

1 that we detailed are their criteria about taking care of  
2 the community, about taking care of the economics, about  
3 taking care of the people.

4 To this respect there are only two main points I  
5 also want to make. And these are in response to TRLIA's  
6 comments in a return response to our letters in our  
7 written position. The first is that many of their  
8 arguments are really about whether their current segment 2  
9 design could be built and certified. Of course it could.  
10 We're not challenging that. There are many alternatives  
11 here that could be built and certified with different  
12 tradeoffs, different advantages and disadvantages,  
13 different cost points. And even Mr. Brunner himself has  
14 acknowledged that this is possible.

15 The real point we want to make here is not  
16 whether the current design could be built. But has that  
17 current design, the process by which it's been done, the  
18 decisions have been made, has it resulted in a balanced  
19 public policy that is a result of good public process?

20 And this leads me to my comments on the -- my  
21 second comments here, is there are comments -- there are  
22 remarks that I am somehow a Johnny-come-lately to this  
23 process. I've gotten involved too late. My recollections  
24 and my documentation differ significantly in my  
25 experiences that's here at TRLIA. To that end, I prepared

1 for you the summary you have in Tab A, a chronology of my  
2 most significant or major or influential contacts. This  
3 is certainly not a complete list. That is about a  
4 three-inch binder. But it's to try and show the flow and  
5 the tone of my attempt at communication and collaboration.

6 I would politely encourage you to take the time  
7 to examine this and see for yourselves the situations that  
8 I have experienced and my wife has experienced in trying  
9 to deal with this situation. It shows that I've been  
10 trying to be involved from the earliest stages; in fact,  
11 submitting comments, submitting reviews a year ago in  
12 June, the first time of which public comment on the draft  
13 EIR was allowed.

14 Throughout the process I've tried to engage at  
15 the earliest opportunity with all the relevant agencies,  
16 individuals, at the earliest chance. And this includes of  
17 course the Yuba County Board of Supervisors, TRLIA, Bender  
18 Rosenthal, and of course this Board. I think I have acted  
19 in a timely responsible manner, executing what should have  
20 been at least, if not above and beyond, the necessary and  
21 expected level of due diligence for a citizen to have in  
22 dealing with the public process. And obviously I've not  
23 been satisfied with what I believe is the response of Yuba  
24 County and of TRLIA in dealing with myself and in dealing  
25 with the agricultural community.

1           Nearly a year of poor responsiveness to the  
2 agricultural community to collaborate -- willingness to  
3 collaborate and communicate those who've been in the  
4 community waiting to try and get a chance to see data to  
5 work with them to try and find solutions, waiting to this  
6 very endpoint to finally begin that engagement at least in  
7 my case. It's not what I consider to be a satisfactory  
8 approach.

9           Ladies and gentlemen, I live right next to where  
10 the water's going to be. My family has been flooded there  
11 three times. Easily as much as anyone I want to see the  
12 levees fixed. I want to see them fixed well and in a  
13 timely fashion. I want to see them protect my community.  
14 But I want to see this done the proper way, to serve and  
15 respect the community that we're trying to protect. I  
16 think we can do this better and that we can, should, and  
17 must push for a better overall solution, a better approach  
18 for where we do the setback.

19           I will gladly take any questions.

20           PRESIDENT CARTER: Any questions for Mr. Rice?

21           VICE-PRESIDENT HODGKINS: Mr. Rice, is there  
22 something about this particular ground that makes it  
23 critical to your operation?

24           MR. RICE: Yes, there is. This particular five  
25 acres, which is the farthest from my house, farthest from

1 my wells, the most difficult to maintain and secure, is  
2 also the most fertile soil I've ever seen in my life. I  
3 started in the midwest before I -- as a farming family  
4 before I came out here. And I have trees that bear fruit  
5 at second leaf. That's their second year of growing.  
6 I've never seen that before.

7           That particular five-acre parcel is extremely  
8 fertile, it is extremely high quality, it produces fruit  
9 that is cherished in five counties. For those who shop at  
10 farmers markets, my apologies. I'm one of the reasons the  
11 cost of fresh fruit for high quality has gone up in those  
12 markets because of the quality I produce. So, yes, it is  
13 key to this farming operation.

14           But, again, that was not the only issue here. If  
15 this was I believe the best place to build this, if there  
16 was a consistency that we were only building on those good  
17 soils, that we were not building on the QAs, that we took  
18 that extra little hit near where Plumas Lake used to be --  
19 certainly that's a high risk area compared to where I  
20 am -- if we had a consistency of approach here and  
21 following all this criteria for the same judgment, I might  
22 be more accepting of this design. But I do not believe  
23 when we've seen all the other tradeoffs, all the other  
24 compromises where we can handle those situations, where we  
25 can handle not exactly the most perfect soil but close to



1 it at least in my area, we can handle those situations,  
2 that we can do that to preserve the homes, preserve the  
3 communities in those areas, it seems to me we have the  
4 margin to find adjustments for these family farms.

5 PRESIDENT CARTER: Other questions for Mr. Rice?

6 MR. RICE: Thank you for your time.

7 PRESIDENT CARTER: Thank you very much.

8 BOARD MEMBER BURROUGHS: I have another question,  
9 Mr. Rice.

10 What would you like to see happen?

11 MR. RICE: I know the Board does not want to  
12 second guess the designs. I'm not asking to do that. I'm  
13 not asking you to come in with a red pen and draw all the  
14 different line. What I'm asking is for you to encourage  
15 TRLIA to take a very hard look at the socioeconomic impact  
16 they're having, a hard look at the data they've missed,  
17 for example, using aerial data to assume a bench instead  
18 of coming in and doing soil samples; to really put their  
19 engineers to work, to say can we move this 400 feet, 300  
20 feet, 200 feet? To really do a better due diligence,  
21 working with the agricultural community, to lessen or  
22 eliminate this impact.

23 It's rather interesting that actually the line of  
24 the current levee just barely misses the property to my  
25 west, which was at one time hoped to be a flowage

1 easement. Now, of course that -- taking. I don't know if  
2 that includes the decision or not. That would be  
3 speculation. But since that is no longer going to be a  
4 flowage easement, that should not be a concern. Maybe  
5 there are economic factors there now that will again allow  
6 it to move further to the west. We need to do a more  
7 balanced exploration to make sure we have a good balanced  
8 policy here.

9 SECRETARY DOHERTY: How many feet to the west  
10 would the line have to move?

11 MR. RICE: If the line moved 350 to 400 feet to  
12 the west, it would clear -- almost entirely clear the four  
13 major family farms that are shown on your map. Anything  
14 in between that helps. Moving even 250 feet may restore  
15 economic viability to some of those farms.

16 We're not talking moving it back to the  
17 intermediate setback. We're not talking moving entire  
18 lands of QA soil. We are -- let's be honest here.  
19 There's not an abrupt cliff change from one soil to  
20 another. It's gradual, it's transition. Can we find a  
21 spot in between that still has acceptable enough soil,  
22 that has a reasonable mitigation of the construction  
23 costs, gives us the safety we need in a lower risk area,  
24 but it's also able to reduce the impact on the farms and  
25 the economic social impact there as well.

1           SECRETARY DOHERTY: Of those farms that will be  
2 impacted, are there farmers that still want to remain even  
3 though they lose some of their lands, and would they be  
4 economically viable?

5           MR. RICE: I do not all of those parcels. I know  
6 the one directly to my south has actually been fighting  
7 very hard to prevent access to their lands, as they are  
8 very much opposed to the taking of their land for losing  
9 farming or losing it to borrow pits. And that is a fairly  
10 substantial parcel, the one immediately to my south.

11          PRESIDENT CARTER: Any furthers questions for Mr.  
12 Rice?

13          MR. RICE: Thank you again for your time.

14          PRESIDENT CARTER: Thank you.

15          BOARD MEMBER BURROUGHS: Thank you.

16          Now, I would like to ask questions that Mr. Rice  
17 just proposed to TRLIA.

18          MR. BRUNNER: Did you have specific questions?

19          BOARD MEMBER BURROUGHS: I pretty much want to  
20 ask the same questions that he asked in totality. Has  
21 there been studies about the economic impact at these  
22 different degrees of 200, 300, or 400 feet?

23          MR. BRUNNER: Well, we do have -- well, why don't  
24 you -- I'll find my --

25          MR. SHAPIRO: The answer is that the economic

1 impact -- the socioeconomic impact was ultimately  
2 addressed through either the voluntary or condemnation  
3 land purchase effort. The way that the condemnation  
4 pricing works -- and I don't think this was covered in  
5 complete detail at the land briefing we had at the last  
6 meeting -- I guess it's been muted -- is that when we  
7 determine which lands we need, we get an appraisal. And  
8 what appraiser does is determines both the value of the  
9 lands that we need as well as the impacts to remaining  
10 lands that are part of that parcel. And so if this truly  
11 becomes a situation where the entire farm becomes  
12 economically not feasible, then that's valued in the  
13 appraisal process. And that's the exact spot where that  
14 land valuation occurs.

15 I don't know where we are with the appraisal on  
16 the Rice's farm. I believe that they've done the  
17 inspection already, but I don't believe that there's an  
18 appraisal yet.

19 MS. RICE: They did it two months ago. I've  
20 never been back.

21 MR. SHAPIRO: Thank you.

22 And so that's the circumstance. And Paul can  
23 present the details of the question of moving it 3- to 400  
24 feet.

25 I do think it's important to harken back to a

1 decision that was before this Board within the last year.  
2 I'm referring to the Mayhew levee situation. And that was  
3 a situation where there was a debate as to whether to take  
4 out some very historic trees in the Mayhew area and  
5 realign the levee to avoid them. And while everybody  
6 concluded technically it was feasible, the judgment of the  
7 engineers was it was better to do a traditional levee even  
8 if it meant taking out those trees. And that was a  
9 decision that the Corps made and that the Rec Board bought  
10 into as the local sponsor for that.

11 And I think that's really the -- I'll just be  
12 kind of blunt now. I think that's the appropriate role  
13 for the Reclamation Board. We did a full evaluation. We  
14 did a CEQA document. We looked at issues. The CEQA  
15 document is final, it's certified and not challenged. And  
16 all of that investigation has been done. Our board made  
17 the decision when it felt it was appropriate to proceed.  
18 And now the question is: Will the Rec Board issue an  
19 encroachment permit?

20 Paul, do you have anything to add about moving?

21 MR. BRUNNER: I did. Is there a way to get  
22 the -- up here?

23 This slide shows the various alternatives that we  
24 looked at. And it starts to address the question of  
25 moving it 3- to 400 feet off on it.

1           These alignments that appear in red and blue were  
2 farther than the 3- or 400 feet. But moving it from here,  
3 which is the Rice property, which is right in this area  
4 here, out 3-, 400 feet moves it directly into the QA --  
5 into the QA soil.

6           SECRETARY DOHERTY: I have a question for you.

7           If originally it was stated to us that this levee  
8 could be a strengthened in place, and that would have been  
9 on QA soils, and now they're moving it and -- but nobody  
10 has ever said that it still couldn't be strengthened in  
11 place, but just that setback levees are better.

12          MR. BRUNNER: Well, actually that's identified in  
13 the overall -- when I showed you the economic impact  
14 slide -- I could go back there -- with the total net  
15 benefits. You end up having a -- when you pull the levee  
16 off -- and one of the reasons why I went through this  
17 presentation a lot is that the QA soil causes the  
18 ability -- or really creates the condition where you have  
19 the underseepage issue occur. As long as you're out in  
20 the QA soil, this yellow area, you are subject to  
21 experiencing -- more subject to experiencing underseepage  
22 problems, which we already have here along the existing  
23 levee.

24          I think I've said before that we could go and  
25 improve, strengthen in place the existing levee. Yes, you

1 could. And I'll say that again. But we've already put  
2 slurry walls into the existing levee in this particular  
3 location and it hasn't worked. You end up with all these  
4 soil deposits and sandy deposits out here that make it  
5 really hard to capture -- we have the opportunity with the  
6 setback to build a new levee on top of really good soil --  
7 or better soil that we have, which is represented by these  
8 formations. It is difficult when you impact farms and  
9 that -- than just people in homes. I understand that.  
10 But in this particular case, you would end up having -- if  
11 we made it this example -- or this exception, everyone  
12 would want to just move, and pretty soon we'd all move to  
13 the west and we'd have the condition again potentially of  
14 being all back in QA soil. There's great benefit of  
15 moving from this condition, pulling it back into the  
16 better soil alignment, so you're not experiencing this.

17           We acknowledge that there are portions of this  
18 levee that are on QA soil. Down through here it's hard to  
19 do this. One could look and say should we pull way back  
20 here and miss it? Even up here, should we go through and  
21 try to use this with the levee? Think of all the property  
22 that we would take if we did that.

23           SECRETARY DOHERTY: And you're saying then that  
24 everybody would want to move to the west. Maybe everybody  
25 doesn't want to move to the west. Maybe this is the only

1 person that wants a slight movement to the west.

2 MR. BRUNNER: That slight movement would pull us  
3 here, around. And then you do need to have some type of  
4 hydraulic flow for the river, is that it would cause us to  
5 do a redesign with some of the levee that we do not  
6 believe needs to be in the QA into the QA soil and make  
7 that adjustment. And then it would impact our schedule.  
8 And we believe it would impact cost too.

9 PRESIDENT CARTER: Have you verified the margin  
10 of the QA versus QM along the entire length of the  
11 proposed setback? Have you verified that in fact the --  
12 well, these are USGS maps are accurate in that area?

13 MR. BRUNNER: The soil borings that we have taken  
14 would verify this location. Could always take more soil  
15 borings. We had a space in through here on original  
16 alignment I believe it was what, one -- 3,000 feet,  
17 something like that, originally. And then we've gone and  
18 spaced it closer.

19 PRESIDENT CARTER: Now, your figure 8 shows  
20 some -- which is the cross-section at that area -- shows  
21 four soil borings. But, you know, the nearest one to the  
22 margin is 700 feet, more or less, you know, into the QA.  
23 So when we're talking a couple hundred feet, that's a  
24 lot -- that's a big distance.

25 MR. REINHARDT: It's not just taking borings. We



1 also have site geologists go out and inspect the  
2 conditions in the field that support the determination of  
3 where that transition of soils is. So it's not solely  
4 based on the borings.

5           And I want to add one more point to Member  
6 Doherty's question. And that's -- this is an issue of  
7 residual risk. We can strengthen existing levee. And  
8 there's a residual risk that there's going to be problems  
9 with it. And each sacrifice we make on design process to  
10 a less than desirable condition, we're taking a higher  
11 residual risk that there's going to be a problem. So,  
12 yes, we can move to the other soils. But it's not a  
13 preferred condition, and we're accepting a slightly higher  
14 risk that we're going to run into problems in the future.

15           And I just wanted to bring probably a much more  
16 pronounced problem, as I understand it, the issue in  
17 Sutter County, the Star Bend setback that Sutter County's  
18 pursuing. As it's been explained to me, this is the  
19 current levee alignment, this is where the Star Bend  
20 setback is proposed. What they've told me is the land  
21 owner at that time wanted the levee realigned to go around  
22 that property, and that's why we got that elbow.

23           So now Sutter County's going back and cutting  
24 across this, which should have been the original  
25 alignment, now at a later date at a much higher cost.

1 It's an extreme example, but it's where it they made a  
2 sacrifice at the time to accommodate a landowner's request  
3 and now we're having to go back and rectify that.

4 BOARD MEMBER BURROUGHS: Well, we're not just  
5 satisfying a landowners' request. Now we're talking with  
6 the Reclamation Board. And as a board, I want to have the  
7 questions answered for Mr. Rice in regards -- with our  
8 staff as well. Being a farmer, I mean I realize that  
9 farmland is very valuable. And I would like to know that  
10 the economic adjustment that's going to be incurred by the  
11 whole community is long lasting. It's not just one farmer  
12 that's here today; it's the whole community. And it's not  
13 only the community; it's our state. And it's not only our  
14 state; it's our world.

15 So for me farming is very valuable. And I would  
16 like our staff -- if they have any comments about how we  
17 could sit at the table and discuss the feasibility of  
18 trying to answer some of the questions that we've been  
19 presented with today.

20 MR. REINHARDT: The only thing that I would add  
21 to that is that that's exactly what we do in the  
22 California Environmental Quality Act process. And while  
23 the Reclamation Board wasn't at the Three Rivers board  
24 meetings, wasn't at the public hearings, that's the exact  
25 discussion that was presented to our board members, that

1 the Rices presented these issues to them and our board  
2 members carefully considered that before making a decision  
3 on which alternative to select. This isn't the first time  
4 that this has been addressed in terms of taking into  
5 consideration their concerns.

6 BOARD MEMBER BURROUGHS: What did your study show  
7 as far as the economic effect on this community? What  
8 does that represent in terms of dollars lost?

9 MR. REINHARDT: I don't have that information. I  
10 don't have the EIR with me. But we can certainly provide  
11 that to your staff and it could be distributed to the  
12 Board members.

13 PRESIDENT CARTER: Other questions for Three  
14 Rivers staff?

15 Okay.

16 MR. NAYLOR: Mr. Chairman, would you mind if I  
17 just read an excerpt from the EIR, since that's been  
18 raised?

19 PRESIDENT CARTER: If you could do it in less  
20 than a minute.

21 MR. NAYLOR: Less than minute easily.

22 PRESIDENT CARTER: Then we need to move on.

23 MR. NAYLOR: I understand. And I appreciate the  
24 courtesy that you're showing the Rices and myself.

25 The draft EIR said at page 42, "The intermediate

1 setback levee" -- which is one of the alternatives  
2 considerably to the west of what we're proposing -- that  
3 alignment "more closely follows some property parcel lines  
4 than the ASB setback levee" -- the one adopted --  
5 "reducing or splitting the parcel by the setback levee.  
6 Because existing parcel configurations would be more  
7 closely maintained, these parcels would remain large  
8 enough to cost effectively continue agricultural  
9 operations. Under the ASB setback levee alignment, by  
10 contrast, portions of these parcels would be separated or  
11 split by the setback levee, resulting in a smaller land  
12 area that may not be large enough to cost effectively  
13 continue agricultural operations."

14 Now, that's in the EIR. And for one reason or  
15 another, the TRLIA board chose to ignore that particular  
16 conclusion. And we're asking for a more modest  
17 modification.

18 Thank you.

19 PRESIDENT CARTER: Thank you.

20 Anything else on this item?

21 Okay. At this point I'm going to ask what the  
22 Board's pleasure is as far as moving forward with this.  
23 Do we want to postpone Item 6 until our next meeting? Or  
24 do we want to -- the hour is late -- or do we want to  
25 continue? What's your pleasure?

1           BOARD MEMBER BURROUGHS: Well, I guess I'd like  
2 to ask TRLIA one more question.

3           PRESIDENT CARTER: Go ahead.

4           BOARD MEMBER BURROUGHS: Are you willing to look  
5 at any of the proposed comments that have some questions  
6 in regard to align where the setback levee is?

7           MR. BRUNNER: We believe that we've already  
8 looked at the alignments. We're far into design, moving  
9 forward on a very fast track schedule.

10          MR. SHAPIRO: I guess I would just add to that  
11 that, despite what Mr. Naylor said, the Three Rivers board  
12 didn't ignore the statement from the EIR. It considered  
13 it. It ultimately made the decision that it felt we  
14 should go forward with this particular alignment. And  
15 we've accommodated that alignment as best we can through  
16 the 90-foot adjustment.

17          MR. REINHARDT: The issue of consideration of  
18 this also gets to the demands that this Board has placed  
19 on us, the requirements that this Board has placed on us  
20 that we complete this project by the end of 2006 -- I'm  
21 sorry -- 2008. That was a critical element of -- was it  
22 the second implementation agreement? -- where this Board  
23 said, "We're going to accelerate this program, but we want  
24 it done in 2008."

25          We cannot proceed -- right now our current

1 schedule is to start construction on the setback levee in  
2 late September. If we revisit the alignment, we will not  
3 be able to maintain that schedule. If we don't start in  
4 September, we will be getting started too late to do  
5 construction this year, and that will result in a one-year  
6 delay.

7           As part of the challenge we have is we're on this  
8 fast track where everybody's telling us, "Go as fast as  
9 you can." And we've done the best we could to address the  
10 concerns to incorporate it. We've made slight  
11 adjustments. But if we want to take it further, it is  
12 going to result in a delay of the project. That's the  
13 balancing act we're trying to maintain here, addressing  
14 the public's needs but maintaining the schedule that  
15 you've required of us. And it is our shared goal.

16           MR. BRUNNER: And we're also trying to build what  
17 we believe is the best levee, not only for us but for this  
18 region.

19           PRESIDENT CARTER: The real question boils down  
20 to: If you had more time, would the outcome be different?  
21 We don't know.

22           MR. BRUNNER: We don't know.

23           VICE-PRESIDENT HODGKINS: You know --

24           MR. BRUNNER: You saw our criteria that we laid  
25 out as to where we are. If we had more time, then one

1 could do the evaluation. But we're working on that  
2 schedule.

3 VICE-PRESIDENT HODGKINS: And, you know, from my  
4 perspective, before I would ask them to move that levee, I  
5 think there should be soil borings done to make absolutely  
6 certain we're not moving it into an area that it makes a  
7 difference that that can be done. But I know if you do  
8 that, to get those -- get that work done and be in a  
9 position to make sure that you're not building the levee  
10 in a worse place, it takes 60 days. And it's the nature  
11 of, you know, getting the boring rig out there, getting it  
12 scheduled, and getting the work done. And so that's the  
13 problem here.

14 And, you know, I think the challenge for the  
15 Board members is going to be, you know, would you delay  
16 this project for a year, because that's really probably  
17 what it breaks down to, in order to address this  
18 particular issue? And that's what I think -- you know,  
19 we're a week away from finding out where we are on that.

20 PRESIDENT CARTER: Well, maybe I need to be  
21 reminded of the project schedule, because you're talking  
22 about doing the foundation work next winter.

23 MR. BRUNNER: This winter. We're planning to  
24 start this September on the foundation work.

25 PRESIDENT CARTER: This fall.

1           So getting borings and collecting some more data  
2 for another 60 days is going to put that potential  
3 construction start date off for another 60 days. So  
4 instead of -- you're talking November instead of September  
5 potentially, weather pending, and -- it may be raining in  
6 September as well.

7           MR. BRUNNER: Right. Those 60 days, 90 days,  
8 whatever it takes to do that, would impact the design,  
9 land acquisition, permitting, whatever -- all those things  
10 factor in and puts us deeper into the winter when we  
11 start.

12           SECRETARY DOHERTY: But you said you've already  
13 done borings. Have you got those samples set aside  
14 somewhere?

15           MR. BRUNNER: We have done borings that come in  
16 for test pits for soil for the levee. And we've got  
17 borings that are in there. I think the borings that we've  
18 used for levee alignment are here, used in the alignment.  
19 Right now we do have some other borings along the  
20 alignment that we're fine-tuning that we're still taking.  
21 So we still have some borings to do. But those borings  
22 would come in within the range of our work on the levee  
23 today.

24           SECRETARY DOHERTY: What I'm saying is --

25           MR. BRUNNER: They wouldn't allow us to adjust.



1 SECRETARY DOHERTY: No. But what I'm saying is,  
2 do you have those borings somewhere and are they  
3 labeled --

4 MR. BRUNNER: Oh, yes.

5 SECRETARY DOHERTY: -- where they were from and  
6 everything?

7 Okay. That's what I wanted to know.

8 PRESIDENT CARTER: Okay. Anything more on this?

9 VICE-PRESIDENT HODGKINS: Well, I don't think we  
10 know that they have any borings on the Rice property or in  
11 this particular area. Do you know?

12 MR. RICE: They have done two borings on my  
13 property, but none to the immediate west in some of the  
14 other potential areas.

15 PRESIDENT CARTER: There's a figure 1 that we  
16 were given today from Three Rivers that shows sites on  
17 borings. I don't know if it's the most up to date. But  
18 this thing locates a series of borings. My count is  
19 there's a little over a half a dozen that are actually on  
20 the proposed levee alignment.

21 MR. BRUNNER: These are boring locations here.

22 PRESIDENT CARTER: Okay. So, Mr. Brunner, how  
23 much time do you need for Item 6?

24 MR. BRUNNER: Item 6 could be very brief. You  
25 already know Prop 1E. We gave you that, as to where we

1 are on the status for that.

2           The other two slides are really updates from what  
3 I presented on March 22nd. We still have money in the  
4 bank. We're still solvent. We're still at a critical  
5 time for the Prop 20 money to come in June. And we're  
6 right on -- you know, to move forward. We need to have  
7 the application where funding becomes -- to move forward.

8           PRESIDENT CARTER: Is the Board interested in  
9 seeing that this afternoon?

10           VICE-PRESIDENT HODGKINS: I'm interested. But  
11 here's what I think the fundamental issue is -- and we  
12 need before the next Board meeting to touch base with DWR.  
13 If DWR is going to have an answer in two weeks, that's  
14 when we need to dig into what the issue is. Because if  
15 they're going to get money from DWR, their financial  
16 problems are gone. If they're not going to get money from  
17 DWR, then we have a whole different can of worms. But  
18 that's -- I don't want to in any way minimize your effort.  
19 But that's fundamentally what the problem is. And so the  
20 DWR answer is the critical thing here.

21           MR. BRUNNER: Right.

22           PRESIDENT CARTER: Okay. And we're meeting in a  
23 week to consider the section 104 request.

24           Okay. Well, I would encourage and strongly  
25 suggest that you continue to look at your levee alignment

1 and tweaking it and working with the landowners in regard  
2 to moving it further west. It sounds like that could  
3 create maybe a little more heartburn for you but a lot  
4 less heartburn for other folks as well. So I guess I'd be  
5 biased that way.

6 BOARD MEMBER BURROUGHS: Ditto.

7 PRESIDENT CARTER: Okay. Let's --

8 MR. BRUNNER: If you're bias that way, even to  
9 affect the schedule?

10 PRESIDENT CARTER: I hear what you're saying.  
11 I'm not sure I believe that it's going to impact the  
12 schedule that much, given that you're currently doing  
13 borings, you've got somebody on staff -- on the site doing  
14 borings now. They -- those resources could be redirected  
15 potentially. It's not going to take 60 days, I don't  
16 think. But that's just my opinion. And other Board  
17 members have their opinion. So I'm not convinced that  
18 it's going to delay the schedule that much. That's my  
19 take.

20 SECRETARY DOHERTY: Mine also.

21 PRESIDENT CARTER: Let's take -- we'll stay here  
22 till 6 o'clock. And then at 6 o'clock we're going to end  
23 our discussion about that. So if you can give us the high  
24 spots of the finances, we will I'm sure revisit this at  
25 some point.

1           (Thereupon an overhead presentation was  
2           Presented as follows.)

3           MR. BRUNNER: All right. This is -- I have two  
4 slides. This one shows the project revenues in the future  
5 and total expenditures that we have.

6           Here are -- our revenue stream is here. We have  
7 most of our money coming from one of two sources.

8           Prop 13 funds to date we received close to 45  
9 million through April.

10          This is our funding stream through the  
11 landowners/developer money. Our funding agreements that  
12 are here. About 69 million have come to date from them.

13          Other miscellaneous revenues that have come in,  
14 levee impact fees and that.

15          Total we have \$133.9 million that have come in.  
16 Our total expenses are 130.8.

17          Which you'll see across here then is a projected  
18 revenue stream of Prop 13 funds. In July we had a Prop  
19 1E, most likely Prop 84 funding stream. So it's crucial  
20 that we get the grant application approved and move  
21 forward for land acquisition -- prop 84 is really only for  
22 land acquisition -- and we get that consummated so we can  
23 make those land purchases and move forward with the  
24 setback.

25          We have it targeted at 10/10/10 throughout these

1 months. This information was provided in the application.

2 We do not know what the dollar amount will be  
3 from the grant application yet. That's what we were  
4 talking about before, and that's why I labeled it as X at  
5 this point.

6 This line item through here is significant.  
7 These numbers add up to the 9.1 million. They represent  
8 the second capital call that was now established and we're  
9 moving forward. The money is in escrow.

10 I don't have additional capital calls put down  
11 there yet. I labeled that Y because strategically that  
12 will be based upon how much money we have to come up with  
13 local share once we know the grant application. And once  
14 that comes in, we will then fill that in.

15 I will let you know that we are in direct  
16 communication with the developers ourselves, the county,  
17 our partners, working through a capital call list and what  
18 they would be and how they could be in trying to work --  
19 make sure that we're in place. Because once we get the  
20 call of what the application says that we're going the  
21 get, we have a specified time period to turn in a  
22 financial plan. So we're working those details out as  
23 much as we can preparatory for that. And we'll then turn  
24 that in. But the team that are working together to try to  
25 make that happen.

1           We do have a little bit of federal funding coming  
2 in to our program.

3           This is for FEMA. This is a grant program that  
4 the county actually had for the all -- detention basin  
5 flood control. Two point three million has come in. We  
6 expect another 2.4 to come in from there.

7           Overall the program ends up balancing. Our FEMA  
8 goal -- or our TRLIA goals, that we -- our expenses match  
9 our revenues when we get done, as close as possible.

10                               --o0o--

11           MR. BRUNNER: I carry that over here. The  
12 revenues are portrayed across here. These revenues would  
13 match what we just saw on the other page. And the  
14 total -- and expenses also match that.

15           And one of the things -- what was on the other  
16 page? -- I was asked to do at the 22 March meeting was to  
17 list down the various critical elements on our program of  
18 how we financed them, particularly land acquisitions that  
19 we already committed to, to make sure that we had funding  
20 for those and what was going on with our designs and that,  
21 that we needed to stay on schedule.

22           And as you see through here on the bottom, this  
23 is our cash balance. And we're in a positive situation  
24 across the lines. And that's what I've been reporting to  
25 you in each Reclamation Board meeting when I come back, is

1 that we are solvent, we are honoring our commitments to  
2 you in our program, and we're doing that.

3 And our day when we come to a decision is really  
4 with the Prop 1E. When that comes in we'll have a big  
5 decision what it is, work out the local share, find out  
6 what that is.

7 Our commitment that we still are trying to do is  
8 move forward on segment 3 -- thank you for doing that  
9 encroachment permit today -- and press on with the flood  
10 control, and hopefully get done by the end of 2008.

11 And I think that's all. With that, those are all  
12 my slides.

13 Any questions?

14 PRESIDENT CARTER: May I make a request. On this  
15 slide here you talked about the Feather River setback,  
16 segments 1 and 3 and segment 2. But we also talked about  
17 the Feather River levee, segments 1, 2, and 3. I get  
18 confused. I don't know if we could maybe refer to it  
19 differently. I got confused in the subcommittee meeting,  
20 I got confused I think in the last Board meeting as well,  
21 because everything's in segments of three and we talked  
22 about segment 1. And I don't know weather we're talking  
23 about the setback or we're talking about the Feather River  
24 levee.

25 Then we had a permit today that talked about

1 segments 1 and 3.

2 MR. BRUNNER: Right, the two ends.

3 PRESIDENT CARTER: Now we're talking about  
4 Feather River setback. So let's say this 1 or 3 design --  
5 and at one point in one of the subcommittee meetings I got  
6 confused.

7 Can we name those something else, maybe A, B, and  
8 C or something like that?

9 MR. BRUNNER: Well, I think for the nomenclature  
10 here we could just take the setback out of that discussion  
11 and just call it Feather segments 1 and 3, and then  
12 call --

13 PRESIDENT CARTER: So that's what that -- that's  
14 not the Feather River setback design?

15 MR. BRUNNER: It is -- wherever you see 2 it  
16 deals a setback. What we strategically are trying to do  
17 in our application talk is that the entire 13-mile length  
18 of the feather -- earlier we had a system communication  
19 where we were. Our point on the feather we did our CEQA  
20 document the entire length of the Feather, we did our  
21 alternative analysis on how to place the levee across the  
22 entire reach of that levee.

23 For our trying to get the project built by the  
24 schedule, we broke it up in segments to get through this,  
25 where segment 2 turned out to be the setback on the



1 project. We've elected the project going as a full reach  
2 and system where it was. And for convenience we've called  
3 them the setback here. Our application --

4 PRESIDENT CARTER: There's 201 million here. It  
5 talks about Feather River setback photo segments 1, 2, and  
6 3.

7 MR. BRUNNER: Yeah, I was going to go to that  
8 point.

9 When we turn in our application to the state for  
10 the project, we have made an appeal to the state in our  
11 application that they should actually consider for funding  
12 under Prop 1E segments 1, 2, and 3 as a system. It is one  
13 reach of that levee that we need to fix, and they should  
14 consider it that way. And I think that nomenclature that  
15 carries over here where it -- we call the entire reach the  
16 setback. But in reality, 1 and 3 really isn't -- aren't  
17 the portions of the setback.

18 PRESIDENT CARTER: Okay. Well, then you're -- to  
19 keep me up with you, you need to be more specific when you  
20 talk about these things, because --

21 MR. BRUNNER: Yeah, we'll work on the  
22 nomenclature.

23 Okay. Thank you.

24 PRESIDENT CARTER: Any other questions?

25 We've got three minutes left.

1 (Laughter.)

2 PRESIDENT CARTER: If there's nothing else, then  
3 we are adjourned.

4 Thank you very much for your patience.

5 (Thereupon the Reclamation Board open  
6 session meeting adjourned at 6:00 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing Reclamation Board open session meeting was  
7 reported in shorthand by me, James F. Peters, a Certified  
8 Shorthand Reporter of the State of California, and  
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 19th day of June, 2007.

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